

2013

CUMULATIVE

POCKET SUPPLEMENT

IDAHO CODE

Compiled Under the Supervision of the
Idaho Code Commission

R. DANIEL BOWEN
JEREMY P. PISCA ANDREW P. DOMAN
COMMISSIONERS

TITLE 54

**Place this supplement in the pocket of the corresponding
volume of the set**

MICHIE

701 East Water Street
Charlottesville, VA 22902

www.lexisnexis.com

Customer Service: 1-800-833-9844

LexisNexis and the Knowledge Burst logo are registered trademarks, and MICHIE is a trademark of Reed Elsevier Properties Inc., used under license. Matthew Bender is a registered trademark of Matthew Bender Properties Inc.

© 2013 State of Idaho
All rights reserved.

5056710

ISBN 978-0-672-83888-0 (Set)
ISBN 978-0-7698-4692-7

PUBLISHER'S NOTE

Amendments to laws and new laws enacted since the publication of the bound volume down to and including the 2013 regular session are compiled in this supplement and will be found under their appropriate section numbers.

This publication contains annotations taken from decisions of the Idaho Supreme Court and the Court of Appeals and the appropriate federal courts. These cases will be printed in the following reports:

Idaho Reports

Pacific Reporter, 3rd Series

Federal Supplement, 2nd Series

Federal Reporter, 3rd Series

United States Supreme Court Reports, Lawyers' Edition, 2nd Series

Title and chapter analyses, in these supplements, carry only laws that have been amended or new laws. Old sections that have nothing but annotations are not included in the analyses.

Following is an explanation of the abbreviations of the Court Rules used throughout the Idaho Code.

I.R.C.P.	Idaho Rules of Civil Procedure
I.R.E.	Idaho Rules of Evidence
I.C.R.	Idaho Criminal Rules
M.C.R.	Misdemeanor Criminal Rules
I.I.R.	Idaho Infraction Rules
I.J.R.	Idaho Juvenile Rules
I.C.A.R.	Idaho Court Administrative Rules
I.A.R.	Idaho Appellate Rules

If you have any questions or suggestions concerning the Idaho Code, please write or call toll free 1-800-833-9844, fax toll free at 1-800-643-1280, or email us at customer.support@bender.com.

Visit our website at <http://www.lexisnexis.com> for an online bookstore, technical support, customer service, and other company information.

LexisNexis

Attn: Customer Service

1275 Broadway

Albany, NY 12204-2694

**ALWAYS CONSULT THE LATEST SUPPLEMENT IN
CONNECTION WITH THE PERMANENT VOLUME**

USER'S GUIDE

To assist the legal profession and the layperson in obtaining the maximum benefit from the Idaho Code, a User's Guide has been included in the first, bound volume of this set.

ADJOURNMENT DATES OF SESSIONS OF LEGISLATURE

Year	Adjournment Date
2013	April 4, 2013



Digitized by the Internet Archive
in 2013

<http://archive.org/details/govlawidsupp542013>

TITLE 54

PROFESSIONS, VOCATIONS, AND BUSINESSES

CHAPTER.

4. STATE ATHLETIC COMMISSION, §§ 54-406, 54-411.
8. COSMETICIANS, § 54-802.
9. DENTISTS, § 54-924.
12. ENGINEERS AND SURVEYORS, §§ 54-1202, 54-1218, 54-1220, 54-1221, 54-1228.
14. NURSES, § 54-1413.
17. PHARMACISTS, §§ 54-1701, 54-1702, 54-1704, 54-1705, 54-1707, 54-1719 — 54-1721, 54-1723A, 54-1726, 54-1728 — 54-1730, 54-1732, 54-1740 — 54-1748, 54-1752, 54-1761.
18. PHYSICIANS AND SURGEONS, §§ 54-1806, 54-1807A, 54-1814.
19. PUBLIC WORKS CONTRACTORS, § 54-1908.
21. VETERINARIANS, § 54-2103.
23. PSYCHOLOGISTS, § 54-2305.
24. DRINKING WATER AND WASTEWATER PROFESSIONALS LICENSING ACT, § 54-2407.

CHAPTER.

25. HORSE RACING, §§ 54-2502, 54-2505, 54-2512A.
27. SCRAP DEALERS, §§ 54-2701, 54-2702, 54-2707.
32. SOCIAL WORK LICENSING ACT, §§ 54-3204, 54-3211.
35. DIETITIANS, §§ 54-3503, 54-3504, 54-3508.
37. OCCUPATIONAL THERAPY PRACTICE ACT, § 54-3705.
41. IDAHO REAL ESTATE APPRAISERS ACT, § 54-4105.
47. ACUPUNCTURE, § 54-4702.
50. INSTALLATION OF HEATING, VENTILATION AND AIR CONDITIONING SYSTEMS, § 54-5015.
51. NATUROPATHIC PHYSICIANS LICENSING ACT, § 54-5110.

CHAPTER 4

STATE ATHLETIC COMMISSION

SECTION.

54-406. Duties of commission — Sanctioning permits — Licensing — Exemptions — Medical certification.

SECTION.

54-411. Statement and report of event — Tax on gross receipts.

54-406. Duties of commission — Sanctioning permits — Licensing — Exemptions — Medical certification. — (1) The commission shall have power, and it shall be its duty, to direct, supervise and control all amateur and professional contests and exhibitions within the state and no such contest or exhibition shall be held or given within this state except in accordance with the provisions of this chapter. The commission has authority to adopt rules to implement the provisions of this chapter and to implement each of the duties and responsibilities conferred upon the commission including, but not limited to:

- (a) Development of an ethical code of conduct for commissioners, commission staff and commission officials;
- (b) Facility and safety requirements relating to the ring, floor plan and apron seating, emergency medical equipment and services, and other equipment and services necessary for the conduct of a program of matches;
- (c) Requirements regarding a participant's apparel, bandages, handwraps, gloves, mouthpiece and appearance during a match;
- (d) Requirements relating to a manager's participation, presence and conduct during a match;

- (e) Duties and responsibilities of all licensees under this chapter;
- (f) Procedures for hearings and resolution of disputes, including the commission's recovery of its costs and fees incurred from an unsuccessful challenger of a contest decision as well as a deposit in an amount determined by the commission;
- (g) Qualifications for appointment of referees and judges;
- (h) Designation and duties of a knockdown timekeeper;
- (i) Setting fee and reimbursement schedules for referees and other officials appointed by the commission or the representative of the commission;
- (j) Establishment of criteria for approval, disapproval, suspension of approval and revocation of approval of amateur sanctioning organizations for amateur contests and exhibitions held in this state including, but not limited to, the health and safety standards the organizations use before, during and after the matches to ensure the health, safety and well-being of the amateur combatants participating in the matches, including the qualifications and numbers of health care personnel required to be present, the qualifications required for referees, and other requirements relating to the health, safety and well-being of the amateur combatants participating in the matches. The commission may adopt by rule, or incorporate by reference into rule, the health and safety standards of United States amateur boxing, inc., as the minimum health and safety standards for an amateur boxing sanctioning organization, and the health and safety standards of the international amateur kickboxing sport association as the minimum health and safety standards for an amateur kickboxing sanctioning organization; and
- (k) Establish fees to be paid by an amateur athletic sanctioning organization that is approved pursuant to subsection (3)(b)(ii) of this section, which fees shall include:
 - (i) Initial and annual application processing fees of not less than two hundred fifty dollars (\$250) and not more than one thousand dollars (\$1,000); and
 - (ii) Initial and annual approval fees of not less than two hundred fifty dollars (\$250) and not more than one thousand dollars (\$1,000).

(2) The commission may, in its discretion, issue or refuse to issue and for cause immediately revoke any sanctioning permit whether or not an admission fee is charged by any person, organization, association or fraternal society. The commission may also, in its discretion, issue or refuse to issue and for cause immediately revoke, suspend or otherwise discipline licenses for participants of sanctioned contests and exhibitions. The commission may recover the costs and fees incurred in the investigation and prosecution of a licensee or permit holder who is found in violation of the provisions of this chapter or the commission's rules.

(3) Specifically exempt from the provisions of this chapter are all contests or exhibitions that:

- (a) Are contests or exhibitions conducted by any secondary school, college or university, whether public or private, where all the participating contestants are bona fide students enrolled in any secondary school, college or university, within or without this state;

(b) Are entirely contests or exhibitions in which all combatants are amateurs and which have been sanctioned as amateur athletic contests or exhibitions by any of the following associations:

(i) United States amateur boxing, inc., also known as USA boxing, inc., the amateur athletic union of the United States, inc., also known as the national amateur athletic union, the amateur athletic union and the AAU or any similar nationally recognized entity approved by the commission; or

(ii) Any other entity that the commission approves to be an amateur athletic sanctioning organization, which approval shall be subject to annual review for purposes of renewal. Notwithstanding any other provision of this chapter, the promoter of any contest or exhibition sanctioned by an organization approved pursuant to this subparagraph shall comply with sections 54-408, 54-411, 54-413, 54-417, 54-419, 54-421 and 54-422, Idaho Code, and the promoter and each participant in such contest or exhibition are subject to sections 54-416, 54-418 and 54-420, Idaho Code, unless specifically exempted by commission rule;

(c) Are contests or exhibitions held under the auspices or sanction of an established nonprofit secondary school activities organization or of its public or nonprofit accredited secondary school members, or held under the auspices or sanction of an established college or university activities organization or its public or not-for-profit accredited college or university members; or

(d) Are contests or exhibitions conducted by any military installation or branch of the United States armed forces, or the state national guard, where the participants are employed by the military installation, are members of the branch of the armed forces, or the state national guard unit conducting the contest or exhibition.

(4) Provided further that every combatant in any contest or exhibition exempt under the provisions of this chapter, prior to engaging in and conducting such contest or exhibition, shall be examined by a licensed physician at least once in each calendar year, or where such contest is conducted by a secondary school, college or university or organization as further described in this section, once in each academic year in which instance the physician shall also designate the maximum and minimum weights at which the combatant shall be medically certified to participate. Provided further that no combatant shall be permitted to participate in any such contest or exhibition in any weight classification other than that or those for which he is certificated. Provided further that the exempted organizations shall be governed by the provisions of section 54-414, Idaho Code, as that section applies to contests or exhibitions conducted by persons exempted in this section from the general provisions of this chapter. No contest or exhibition shall be conducted within this state except pursuant to a license issued in accordance with the provisions of this chapter and the rules of the commission except as hereinabove provided.

History.

I.C., § 54-406, as added by 1992, ch. 229, § 2, p. 679; am. 2004, ch. 385, § 6, p. 1147; am. 2007, ch. 149, § 6, p. 444; am. 2009, ch. 93, § 3, p. 270; am. 2010, ch. 311, § 2, p. 831; am. 2013, ch. 345, § 1, p. 929.

STATUTORY NOTES**Amendments.**

The 2013 amendment, by ch. 345, added "including the commission's recovery of its costs and fees incurred from an unsuccessful challenger of a contest decision as well as a deposit in an amount determined by the commission" at the end of paragraph (1)(f) and added the last sentence in subsection (2).

Compiler's Notes.

For more on United States amateur boxing, inc., also known as USA boxing, inc., see <http://usaboxing.org>.

The international amateur kickboxing sport associating, referred to in paragraph (1)(j), merged into the world association of kickboxing organizations (WAKO) in 2006. See <http://www.wakoweb.com>.

For more information on the amateur athletic union of the United States, inc., or AAU, see <http://aausports.org>.

Effective Dates.

Section 3 of S.L. 2013, ch. 345 declared an emergency. Approved April 11, 2013.

54-411. Statement and report of event — Tax on gross receipts. —

(1) Any promoter as herein provided shall, at least seven (7) days prior to the holding of any contest or exhibition, file with the commission a statement setting forth the name of each combatant, his manager or managers, the total number of tickets available for the contest or exhibition and such other information as the commission may require. The promoter shall pay to the commission at the time of the sanctioning permit application an initial event tax of one thousand dollars (\$1,000). Within seventy-two (72) hours after the termination of any contest or exhibition the promoter shall file with the commission representative a gross receipts report, duly verified as the commission may require showing the number of tickets sold for such contest or exhibition, the price charged for such tickets and the gross receipts thereof without any deduction whatsoever, and such other and further information as the commission may require. If the initial event tax previously paid is less than nine percent (9%) of the gross receipts for the event, then the promoter shall pay to the commission at the time of filing the above report an additional event tax equal to nine percent (9%) of the gross receipts, minus the initial event tax previously paid, for deposit by the commission.

(2) All tickets for any contest or exhibition shall be issued, sold and distributed by an independent ticket distributor or broker not associated with the promoter and not associated with the venue unless approved by the commission. The number of complimentary tickets shall be limited to two percent (2%) of the total tickets sold per event location. All complimentary tickets exceeding this set amount shall be subject to taxation. The promoter shall limit the number of persons admitted to the event to the number of available tickets that are actually sold, given away or otherwise issued for the event.

(3) Gross receipts reports signed under oath shall also include:

- (a) The name of the promoter;
- (b) The contest or exhibition sanctioning permit number;
- (c) The promoter's business address and any license or sanctioning permit number required of such promoter by law;
- (d) Gross receipts as specified by this section, during the period specified by this section; and
- (e) Such further information as the commission may require to enable it

to compute correctly and collect the assessment levied pursuant to this section.

(4) In addition to the information required on gross receipts reports, the commission may request, and the promoter shall furnish, any information deemed necessary for a correct computation of the assessment levied pursuant to this section.

(5) All levies pursuant to this section shall be collected by the commission and shall be deposited in the state treasury to the credit of the occupational licenses fund [account].

(6) The moneys collected from the assessment levied pursuant to the provisions of this section shall be in addition to all other revenues and funds received by the commission.

(7) The promoter shall compute and pay to the commission the required assessment due. If the payment of the assessment is not postmarked or delivered to the commission as specified in subsection (1) of this section, the assessment shall be delinquent from such date. In addition, if the promoter has not paid the initial event tax as provided in subsection (1) of this section, the promoter shall not hold the event.

(8) Of the moneys collected by the commission pursuant to the tax authorized in subsection (1) of this section, up to five percent (5%) of said tax may be used by the commission for the promotion and support of amateur contests and exhibitions in this state. All parties interested in receiving a distribution must submit an application to the commission which shall include the name of the person or entity applying and a detailed description of what the applicant intends to do with the distribution if granted. The commission shall consider all applications and assign distributions, if any, at the end of each fiscal year to those applicants the commission deems most qualified. The commission may make such distributions only if the commission has a positive balance within the occupational licenses fund [account] and sufficient revenue to cover its projected expenses for the upcoming year.

(9) It shall be the duty of every promoter required to make a gross receipts report and pay any assessment pursuant to the provisions of this section to keep and preserve suitable records and documents which may be necessary to determine the amount of assessment due as will substantiate and prove the accuracy of such reports. All such records shall be preserved for a period of three (3) years, unless the commission, in writing, has authorized their destruction or disposal at an earlier date, and shall be open to examination at any time by the commission or by its authorized agents.

(10) In the event the state athletic commission's debt owed to the bureau of occupational licenses exceeds two hundred thousand dollars (\$200,000), the commission's operations will be suspended, including issuance of licenses and permits. In order for the commission's operations to be reinstated all outstanding debt owed to the bureau of occupational licenses must be paid in full.

History.

I.C., § 54-409, as added by 1992, ch. 229, § 2, p. 679; am. and redesig. 2004, ch. 385, § 11, p. 1147; am. 2007, ch. 149, § 8, p. 444;

am. 2008, ch. 113, § 1, p. 317; am. 2009, ch. 93, § 7, p. 270; am. 2010, ch. 311, § 5, p. 831; am. 2013, ch. 345, § 2, p. 929.

STATUTORY NOTES**Cross References.**

Bureau of occupational licenses, § 67-2602.

sentence; added the first sentence in subsection (2); and added subsection (10).

Amendments.

The 2013 amendment, by ch. 345, in subsection (1), substituted “pay to the commission at the time of the sanctioning permit application an initial event tax of one thousand dollars (\$1,000)” for “simultaneously pay to the commission an initial event tax of four hundred dollars (\$400)” at the end of the first sentence, and substituted “nine percent (9%)” for “five percent (5%)” two times in the last

Compiler's Notes.

The bracketed insertions at the end of subsection (5) and near the end of subsection (8) were added by the compiler to correct the name of the referenced account. See § 67-2605.

Effective Dates.

Section 3 of S.L. 2013, ch. 345 declared an emergency. Approved April 11, 2013.

CHAPTER 8

COSMETICIANS

SECTION.

54-802. Definitions.

54-802. Definitions. — For the purpose of this chapter, the following definitions shall apply:

(1) “Cosmetology” shall constitute any one (1) or combination of the following practices when done upon the human body for cosmetic purposes and not for the treatment of disease or physical or mental ailments:

(a) Cutting, trimming, arranging, dressing, curling, waving by any method, cleansing, singeing, bleaching, coloring, or similar work upon the hair.

(b) Noninvasive care of the skin of the face and body by application of cosmetic preparations, antiseptics, tonics, lotions, creams and essential oils to cleanse, massage, exfoliate, hydrate and stimulate; makeup application; pore extraction; use of chemical exfoliants approved for professional esthetic use; particle exfoliation; use of any mechanical or electrical apparatus or appliance designed for nonmedical care of the skin; the temporary removal of superfluous hair by means of lotions, creams, waxing, tweezing or depilatories, and tinting of eyebrows and eyelashes.

(c) Manicuring, pedicuring the nails, and the application of artificial nails.

(2) “Registered cosmetologist” shall mean any person licensed to practice cosmetology.

(3) “Nail technology” shall constitute any one (1) or more of the following practices when done upon the human body:

(a) Manicuring, pedicuring the nails, and the application of all forms of artificial nails.

(b) Massage of the hands and feet.

(4) "Nail technician" shall mean any licensed person whose practice of cosmetology is limited to nail technology.

(5) "Nail technology instructor" shall mean a nail technologist who is licensed to teach nail technology or any practice thereof in a school of cosmetology.

(6) "Apprentice" shall mean any person registered with the board to engage in the learning or acquiring of any or all of the practices of cosmetology in a licensed cosmetological establishment, and while so learning performs or assists in any of the practices of cosmetology.

(7) "Student" shall mean any person engaged in the learning or acquiring of any or all of the practices of cosmetology in a licensed school of cosmetology, and while so learning performs or assists in any of the practices of cosmetology.

(8) "Instructor" shall mean a cosmetologist who is licensed to teach cosmetology or any practices thereof in a school of cosmetology, school or college of barbering, or cosmetology establishment meeting the requirements for apprenticeship training.

(9) "Instructor trainee" shall mean a registered cosmetologist who is in a school of cosmetology to receive training to teach cosmetology.

(10) "Cosmetological establishment" shall mean any licensed place or part thereof other than a school of cosmetology wherein cosmetology is practiced.

(11) "School of cosmetology" is a postsecondary school.

(a) Schools of cosmetology must be licensed by name by the state board of cosmetology.

(b) Schools of cosmetology admit as regular students only individuals who meet the requirements of section 54-805, Idaho Code.

(12) "Board" means the Idaho board of cosmetology.

(13) "Department" means the Idaho department of self-governing agencies.

(14) "Chapter" as used herein refers to chapter 8, title 54, Idaho Code.

(15) "Electrologist" means any person licensed to practice electrology and who is skilled in the permanent removal of unwanted hair.

(16) "Electrolysis or electrology" means the permanent removal of hair by destroying the hair producing cells of the skin and vascular system using equipment and devices approved by and registered with the United States food and drug administration.

(17) "Esthetics" means noninvasive care of the skin of the face and body by application of cosmetic preparations, antiseptics, tonics, lotions, creams and essential oils to cleanse, massage, exfoliate, hydrate and stimulate; makeup application; pore extraction; use of chemical exfoliants approved for professional esthetic use; particle exfoliation; use of any mechanical or electrical apparatus or appliance designed for nonmedical care of the skin; the temporary removal of superfluous hair by means of lotions, creams, waxing, tweezing or depilatories, and tinting of eyebrows and eyelashes.

(18) "Esthetician" means any person licensed to practice esthetics.

(19) "Esthetics instructor" shall mean an esthetician who is licensed to teach esthetics or any practice thereof in a school of cosmetology approved to teach esthetics.

(20) "Electrologist instructor" shall mean an electrologist who is licensed to teach electrology or any practices thereof in a school of cosmetology approved to teach electrology.

(21) "Student electrologist instructor" shall mean an electrologist who is in a school of cosmetology approved to teach electrology to receive training to teach electrology.

(22) "Makeover or glamour photography business" means any business engaged in the offering of photographic services to the general public and whose employees engage in the facial application of cosmetic products or the arranging of the hair of customers in connection with the sale, or attempted sale, of photographic services.

(23) "Retail cosmetics dealer" means a fixed retail business which offers cosmetic products for sale at retail to members of the general public and whose employees engage in the facial application of cosmetic products to customers in connection with the sale, or attempted sale, of the products without compensation from the customer other than the regular price of the merchandise.

(24) "Demonstration, competition or production" means an organized event of limited duration where cosmetology services may be performed, if sponsored by a salon, school of cosmetology or cosmetology-related organization.

(25) "Haircutting" means cutting, trimming, arranging, dressing, curling, cleansing, singeing or similar work upon the hair.

(26) "Hairoffer" means any licensed person whose practice of cosmetology is limited to haircutting.

History.

1929, ch. 265, § 2, p. 601; I.C.A., § 53-1202; am. 1949, ch. 207, § 2, p. 433; am. 1959, ch. 281, § 2, p. 574; am. 1974, ch. 13, § 68, p. 138; am. 1976, ch. 127, § 1, p. 477; am. 1980, ch. 80, § 1, p. 168; am. 1980, ch. 81, § 1, p. 173; am. 1988, ch. 74, § 3, p. 106; am. 1989, ch. 111, § 1, p. 253; am. 1990, ch. 98, § 1, p. 202; am. 1991, ch. 124, § 1, p. 270; am. 1994, ch. 312, § 1, p. 988; am. 1997, ch. 71, § 1, p. 146; am. 1998, ch. 288, § 1, p. 921; am. 1999, ch. 175, § 1, p. 471; am. 2001, ch. 134, § 2, p. 482; am. 2006, ch. 411, § 2, p. 1242; am. 2007, ch. 48, § 1, p. 120; am. 2008, ch. 86, § 1, p. 226; am. 2011, ch. 91, § 1, p. 197; am. 2013, ch. 179, § 1, p. 415.

STATUTORY NOTES

Amendments.

The 2013 amendment, by ch. 179, rewrote subsection (11), which formerly read: "School of cosmetology" shall mean any licensed place or part thereof wherein cosmetology is taught to students."

administration regulation of cosmetics, see <http://www.fda/cosmetics/default.htm>.

Effective Dates.

Section 2 of S.L. 2013, ch. 179 declared an emergency. Approved March 29, 2013.

Compiler's Notes.

For more on the federal food and drug

CHAPTER 9

DENTISTS

SECTION.

54-924. Other grounds of refusal, revocation

or suspension of dentists —
Probation agreements.

54-924. Other grounds of refusal, revocation or suspension of dentists — Probation agreements. — The board may refuse to issue or renew a dental license, or may revoke, suspend, place on probation, reprimand or take other disciplinary action with respect to a dental license as the board may deem proper, including administrative penalties not to exceed ten thousand dollars (\$10,000) per violation and assessment of the costs of disciplinary proceedings in the event a dentist shall:

(1) Intentionally misstate, or fail fully to disclose, a fact material to determination of fitness and qualification in an application for licensure to practice dentistry, or cheat in an examination to practice dentistry; or procure a certificate or finding of qualification to practice dentistry or subsequently a license by false, fraudulent or deceitful means or in any other name than his own true name; or

(2) Practice dentistry under any name other than his own true name except as a professional service corporation or professional limited liability company or as a limited managed care plan pursuant to chapter 39, title 41, Idaho Code; or

(3) Practice or in any manner or by any means or at any place hold out or represent himself as practicing dentistry in or under the name of, or as a member, representative, agent or employee of, or in connection with, any company, association, or corporation, or under any trade, fictitious or business name except as a professional service corporation or professional limited liability company or as a limited managed care plan pursuant to chapter 39, title 41, Idaho Code, except for a dentist practicing dentistry as an employee or contracting dentist providing dentistry services to any health center as defined and authorized in section 330 of the public health service act as amended codified at 42 U.S.C. 254b; or

(4)(a) Make, or cause to be made, or assist in making, any fraudulent, false, or misleading statement as to his own, or an employee's, associate's, or other dentist's or dental hygienist's skill or lack of skill, or method of practice; or

(b) Claim to practice dentistry without causing pain; or

(c) Claim superiority over other dentists; or

(d) Publish, advertise, or circulate reports, letters, certificates, endorsements, or evidence of cures or corrections of dental conditions by such dentist, his employee or associate by reason of his or their skill, experience, or ability or of his or their use of any system, method, technique, device, drug, medicine, material, manipulation or machine; or

(e) Advertise the use of, or use, any system, method, technique, device, drug, medicine, material or machine, which is either falsely advertised or misnamed; or

(5) Employ any person to obtain patronage, or call or seek to call, the attention of the public to him, his office, his skill, or his practice, by public

exhibition, use, reproduction, or representation of specimens or samples, of dental work, or by demonstrations in public. This shall not apply to teaching in dental or dental hygiene schools, or demonstrations or exhibitions before meetings of other dentists or dental hygienists; or

(6) Use intoxicants or drugs to such a degree as to render him unfit to practice; or

(7) Commit malpractice, that is, to provide dental care which fails to meet the standard of dental care provided by other qualified dentists in the same community or similar communities, taking into account his training, experience and the degree of expertise to which he holds himself out to the public; or

(8) Engage in unprofessional, unethical or immoral conduct, as defined by board rules; or

(9) Advertise in such way as to deceive or defraud, or probably deceive or defraud, the public or patrons; or

(10) Employ or permit any person not a dentist to practice dentistry, or any person not a dentist or dental hygienist to practice dental hygiene, in his office or under his control or direction; or

(11) Fail, neglect or refuse to keep his office or equipment, or otherwise conduct his work in accordance with current state and federal laws, rules and regulations; or

(12) Violate any other provisions of law or rules adopted by the board; or

(13) Falsely identify himself to the public as a specialist in a specialty area of dentistry as defined by rule; or

(14) Engage in the practice of dentistry as a member, stockholder, employee, director, partner or proprietor in any business entity in which a person, not duly licensed to practice dentistry in this state, holds an ownership interest. The provisions of this subsection shall not apply to such engagement in a limited managed care plan pursuant to chapter 39, title 41, Idaho Code, or to a dentist practicing dentistry for any health care center as defined and authorized in section 330 of the public health service act as codified at 42 U.S.C. section 254b.

History.

1949, ch. 102, § 24, p. 177; am. 1963, ch. 336, § 1, p. 963; am. 1967, ch. 312, § 21, p. 886; am. 1971, ch. 83, § 4, p. 181; am. 1981,

ch. 215, § 12, p. 389; am. 1986, ch. 35, § 8, p. 108; am. 1987, ch. 30, § 9, p. 39; am. 1994, ch. 58, § 24, p. 98; am. 2006, ch. 285, § 9, p. 874; am. 2013, ch. 281, § 1, p. 730.

STATUTORY NOTES

Amendments.

The 2013 amendment, by ch. 281, deleted "authorized by the provisions of the" preceding "professional service corporation" in subsections (2) and (3); added "or professional limited liability company or as a limited managed care plan pursuant to chapter 39, Title 41, Idaho Code" to the end of subsection (2); added "or professional limited liability com-

pany or as a limited managed care plan pursuant to chapter 39, title 41, Idaho Code, except for a dentist practicing dentistry as an employee or contracting dentist providing dentistry services to any health center as defined and authorized in section 330 of the public health service act as amended codified at 42 U.S.C. 254b" to the end of subsection (3); and added subsection (14).

CHAPTER 12

ENGINEERS AND SURVEYORS

SECTION.

54-1202. Definitions.
54-1218. Public work.
54-1220. Disciplinary action — Procedures.
54-1221. Reissuance of licenses and wall certificates.

SECTION.

54-1228. Administering and certification of oaths — Authority of professional land surveyors.

54-1202. Definitions. — As used in this chapter, unless the context or subject matter requires otherwise:

(1) "Benchmark" means a material object, natural or artificial, whose elevation is referenced to an adopted datum.

(2) "Board" means the Idaho board of licensure of professional engineers and professional land surveyors, hereinafter provided by this chapter.

(3) "Business entity" means a corporation, professional corporation, limited liability company, professional limited liability company, general partnership, limited partnership, limited liability partnership, professional limited liability partnership or any other form of business except a sole proprietorship.

(4) "Consulting engineer" means a professional engineer whose principal occupation is the independent practice of professional engineering; whose livelihood is obtained by offering engineering services to the public; who is devoid of public, commercial and product affiliation that might tend to infer a conflict of interest; and who is cognizant of his public and legal responsibilities, and is capable of discharging them.

(5) "Engineer" means a person who is qualified to practice engineering by reason of his special knowledge and use of mathematical, physical and engineering sciences, and the principles and methods of engineering analysis and design, acquired by professional education and engineering experience.

(6) "Engineer intern" means a person who has qualified for, taken and passed an examination in the fundamentals of engineering subjects as provided in this chapter.

(7) "Land survey" means measuring the field location of corners that:

- (a) Determine the boundary or boundaries common to two (2) or more ownerships;
- (b) Retrace or establish land boundaries;
- (c) Retrace or establish boundary lines of public roads, streets, alleys or trails; or
- (d) Plat lands and subdivisions thereof.

(8) "Land surveyor intern" means a person who has qualified for, taken and passed an examination in the fundamentals of surveying subjects as provided in this chapter.

(9) "Professional engineer" means a person who has been duly licensed as a professional engineer by the board under this chapter.

(10) "Professional engineering" and "practice of professional engineering" mean any service or creative work offered to or performed for the public for

any project physically located in this state, such as consultation, investigation, evaluation, planning, designing, teaching upper division engineering design subjects, and responsible charge of observation of construction in connection with any public or private utilities, structures, buildings, machines, equipment, processes, works or projects or to certify elevation information, wherein the public welfare or the safeguarding of life, health, or property is concerned or involved, when such service requires the application of engineering principles and data. A person shall be construed to practice or offer to practice professional engineering within the meaning and intent of this chapter who practices or offers to practice any of the branches of the profession of engineering for the public for any project physically located in this state or who, by verbal claim, sign, advertisement, letterhead, card, or in any other way represents himself to be a professional engineer or through the use of some other title implies that he is a professional engineer or that he is licensed under this chapter, or holds himself out as able to perform or who does perform for the public for any project physically located in this state, any engineering service or work or any other service designated by the practitioner which is the practice of professional engineering.

(11) "Professional land surveying" and "practice of professional land surveying" mean responsible charge of land surveying to determine the correct boundary description, to establish or reestablish land boundaries, to plat lands and subdivisions thereof or to certify elevation information. Any person shall be construed to practice or offer to practice professional land surveying who engages in professional land surveying, or who, by verbal claim, sign, advertisement, letterhead, card, or in any other way represents himself to be a professional land surveyor, or who represents himself as able to perform or who does perform any professional land surveying service or work or any other service designated by the practitioner which is professional land surveying.

(12) "Professional land surveyor" means a person who is qualified by reason of his knowledge of the principles of land surveying acquired by education and practical experience to engage in the practice of professional land surveying and who has been duly licensed as a professional land surveyor by the board under this chapter.

(13) "Public" means any person, firm, corporation, partnership, company, government agency, institution or any other entity recognized by law.

(14) "Responsible charge" means the control and direction of engineering work, or the control and direction of land surveying work, requiring initiative, professional skill, independent judgment and professional knowledge of the content of relevant documents during their preparation. Except as allowed under section 54-1223, Idaho Code, reviewing, or reviewing and correcting, documents after they have been prepared by others does not constitute the exercise of responsible charge.

(15) "Rules of professional responsibility" means those rules, if any, promulgated by the board, as authorized by the Idaho Code.

(16) "Signature" means either: an original handwritten message identification containing the name of the person who applied it; or a digital

signature which is an electronic authentication process attached to or logically associated with an electronic document. The digital signature must be unique to the person using it; must be capable of verification; must be under the sole control of the person using it; and must be linked to a document in such a manner that the digital signature is invalidated if any data in the document is changed.

(17) "Standard design plan" means a building, structure, equipment or facility which is intended to be constructed or sited at multiple locations and for which some or all of the plans must be prepared by a professional engineer.

History.

1939, ch. 231, § 2, p. 516; am. 1957, ch. 234, § 2, p. 547; am. 1961, ch. 258, § 1, p. 422; am. 1978, ch. 170, § 1, p. 371; am. 1986, ch. 140, § 2, p. 375; am. 1996, ch. 357, § 2, p. 1185; am. 2000, ch. 289, § 1, p. 991; am. 2001, ch. 247, § 2, p. 889; am. 2002, ch. 6, § 1, p. 6; am. 2007, ch. 219, § 1, p. 655; am. 2008, ch. 378, § 3, p. 1024; am. 2011, ch. 136, § 10, p. 383; am. 2013, ch. 339, § 1, p. 886.

STATUTORY NOTES

Amendments.

The 2013 amendment, by ch. 339, in the

first sentences in subsections (10) and (11), inserted "or to certify elevation information."

54-1218. Public work. — (1) It shall be unlawful for this state, or for any county, city, school district, irrigation district, drainage district, highway district, or other subdivision of the state, having power to levy taxes or assessments against property situated therein, to engage in the construction of any public work when the public health or safety is involved unless the plans and specifications and estimates have been prepared by, and the construction reviewed by a professional engineer.

(2) The provisions of this section shall not apply to public construction, reconstruction, maintenance and repair work that is insignificant, that is projects of less than ten thousand dollars (\$10,000) in total cost, performed by employees of the public agency and performed in accordance with standards for such work that have been certified by a professional engineer and duly adopted by the public agency's governing body including, but not limited to, the Idaho standards for public works construction and any supplements thereto, and only if a professional engineer determines that such public construction, reconstruction, maintenance and repair work does not represent a material risk to public health or safety.

History.

1939, ch. 231, § 18, p. 516; am. 1978, ch. 170, § 14, p. 371; am. 2008, ch. 378, § 15, p. 1039; am. 2013, ch. 289, § 1, p. 762.

STATUTORY NOTES

Amendments.

The 2013 amendment, by ch. 289, added subsection (2) and the subsection (1) designation.

Compiler's Notes.

As to the Idaho standards for public works construction, see <http://lhtac.org/publications/ispwcl/>.

54-1220. Disciplinary action — Procedures. — (1) Any affected party may prefer charges of fraud, deceit, gross negligence, incompetence,

misconduct or violation of any provision of this chapter, or violation of any of the rules promulgated by the board against any individual licensee or certificate holder or against any business entity holding a certificate of authorization or against a person applying for a license or against a business entity applying for a certificate of authorization. Repeated acts of negligence may be considered as a gross act for disciplinary action. Such charges shall be in writing, and shall be sworn to by the person or persons making them and shall be filed with the executive director of the board. The executive director of the board shall be considered an affected party and may be the person making and filing the charges.

(2) All charges, unless dismissed by the board as unfounded or de minimis, or unless settled informally, shall be heard by the board within six (6) months after the date they were received at the board office unless such time is extended by the board for justifiable cause.

(3) Administrative proceedings shall be governed by the provisions of chapter 52, title 67, Idaho Code.

(4) If, after an administrative hearing, the board votes in favor of sustaining the charges, the board may, in its discretion, impose an administrative penalty, not to exceed five thousand dollars (\$5,000) for deposit in the general fund of the state of Idaho. In addition, the board, in its discretion, may admonish, reprimand, suspend, revoke, refuse to renew, refuse to grant, or any combination thereof, the individual's license or certificate or a business entity's certificate of authorization. The board may also, in its discretion, require the individual to practice under the supervision of another licensee, or require the individual to successfully complete continuing education courses as may be prescribed by the board.

(5) The board shall have jurisdiction over licensees whose licenses are not current provided the action relates to services performed when the license was current and valid.

History.

1939, ch. 231, § 20, p. 516; am. 1957, ch. 234, § 12, p. 547; am. 1963, ch. 25, § 1, p. 167; am. 1978, ch. 170, § 16, p. 371; am. 1986, ch. 140, § 18, p. 375; am. 1991, ch. 21, § 1, p. 43; am. 1993, ch. 216, § 63, p. 587; am. 1996, ch. 357, § 16, p. 1185; am. 2000, ch. 289, § 12, p. 991; am. 2001, ch. 247, § 7, p. 889; am. 2004, ch. 84, § 4, p. 312; am. 2007, ch. 219, § 4, p. 655; am. 2008, ch. 378, § 17, p. 1040; am. 2010, ch. 111, § 5, p. 223; am. 2013, ch. 339, § 2, p. 886.

STATUTORY NOTES

Amendments.

The 2013 amendment, by ch. 339, substi-

tuted "de minimis" for "trivial" in subsection (2).

54-1221. Reissuance of licenses and wall certificates. — The board may, upon petition of an individual or a business entity and following a hearing, reissue or reinstate a license or certificate or certificate of authorization, provided three (3) or more members of the board vote in favor of such reissuance or reinstatement. A new wall certificate to replace any wall certificate revoked, lost, destroyed or mutilated may be issued upon payment of such reasonable charge therefor as shall be fixed by the board to

cover the estimated cost of such reissuance, but not exceeding ten dollars (\$10.00) in any case.

History.

1939, ch. 231, § 21, p. 516; am. 1957, ch. 234, § 13, p. 547; am. 1963, ch. 26, § 1, p. 168; am. 1986, ch. 140, § 19, p. 375; am. 2001, ch. 247, § 8, p. 889; am. 2008, ch. 378, § 18, p. 1041; am. 2013, ch. 339, § 3, p. 886.

STATUTORY NOTES**Amendments.**

The 2013 amendment, by ch. 339, inserted "wall" in the section heading; in the first sentence, inserted "and following a hearing";

and, in the second sentence, substituted "wall" for "license or" two times and deleted "or certificate of authorization" following "A new wall certificate" near the beginning.

54-1228. Administering and certification of oaths — Authority of professional land surveyors. — Every professional land surveyor is authorized to administer and certify oaths, when it becomes necessary to take testimony to identify or establish old or obliterated corners, or to perpetuate a corner that is in a perishable condition, or whenever the importance of the land survey makes it desirable. A record of such oaths shall be kept as part of the field notes of the land survey.

History.

1903, p. 81, § 6; am. R.C., § 1409; reen. C.L., § 1409; C.S., § 2241; am. 1921, ch. 158, § 2, p. 351; I.C.A., § 53-2307; am. 1957, ch.

234, § 18, p. 547; am. 1978, ch. 170, § 21, p. 371; am. 1986, ch. 140, § 23, p. 375; am. 2008, ch. 378, § 23, p. 1044; am. 2013, ch. 339, § 4, p. 886.

STATUTORY NOTES**Amendments.**

The 2013 amendment, by ch. 339, substi-

tuted "obliterated corners" for "lost corners" in the first sentence.

CHAPTER 14**NURSES****SECTION.**

54-1413. Disciplinary action.

54-1413. Disciplinary action. — (1) **Grounds for discipline.** The board shall have the power to refuse to issue, renew or reinstate a license issued pursuant to this chapter, and may revoke, suspend, place on probation, reprimand, limit, restrict, condition or take other disciplinary action against the licensee as it deems proper, including assessment of the costs of investigation and discipline against the licensee, upon a determination by the board that the licensee engaged in conduct constituting any one (1) of the following grounds:

- (a) Made, or caused to be made, a false, fraudulent or forged statement or representation in procuring or attempting to procure a license to practice nursing;
- (b) Practiced nursing under a false or assumed name;
- (c) Is convicted of a felony or of any offense involving moral turpitude;

- (d) Is or has been grossly negligent or reckless in performing nursing functions;
- (e) Habitually uses alcoholic beverages or drugs as defined by rule;
- (f) Is physically or mentally unfit to practice nursing;
- (g) Violates the provisions of this chapter or rules and standards of conduct and practice as may be adopted by the board;
- (h) Otherwise engages in conduct of a character likely to deceive, defraud or endanger patients or the public, which includes, but is not limited to, failing or refusing to report criminal conduct or other conduct by a licensee that endangers patients;
- (i) Has had a license to practice nursing suspended or revoked in any jurisdiction. A certified copy of the order of suspension or revocation shall be *prima facie* evidence of such suspension or revocation; or
- (j) Failure to comply with the terms of any board order, negotiated settlement or probationary agreement of the board, or to pay fines or costs assessed in a prior disciplinary proceeding.

(2) Separate offense. Each day an individual violates any of the provisions of this chapter or rules and standards of conduct and practice as may be adopted by the board shall constitute a separate offense.

(3) Proceedings.

(a) The executive director shall conduct such investigations and initiate such proceedings as necessary to ensure compliance with this section. The board may accept the voluntary surrender of a license from any nurse under investigation and accordingly enter an order revoking or suspending such license and/or imposing such conditions, limitations, or restrictions on the practice of any such nurse as may be appropriate in the discretion of the board. Otherwise, every person subject to disciplinary proceedings shall be afforded an opportunity for hearing after reasonable notice. All proceedings hereunder shall be in accordance with chapter 52, title 67, Idaho Code.

(b) Hearings shall be conducted by the board or by persons appointed by the board to conduct hearings and receive evidence. The board and any person duly appointed by the board to conduct hearings shall have all powers as are necessary and incident to orderly and effective receipt of evidence including, but not limited to, the power to administer oaths and to compel by subpoena attendance of witnesses and production of books, records and things at the hearing or at a deposition taken by a party in accordance with the Idaho rules of civil procedure. Any party shall be entitled to the use of subpoena upon application therefor.

(c) In the event any person fails to comply with a subpoena personally served upon him or refuses to testify to any matter regarding which he may be lawfully interrogated, the board shall petition the district court in the county where such failure or refusal occurred or where such person resides, to enforce such subpoena or compel such testimony. Proceedings before the district court shall be for contempt in the same nature as contempt of court for failure or refusal to comply with an order of the court and the court shall have the same powers to secure compliance with subpoena and testimony or to impose penalties as in contempt of court proceedings.

(4) Probation/Subsequent review. Any order of the board entered under this section may be withheld or suspended for a probationary period to be fixed by the board upon such terms and conditions as may be appropriate in order to regulate, monitor and/or supervise the practice of nursing by the licensee subject to such order for the prescribed probationary period. Any order of the board entered under this section may be withdrawn, reversed, modified or amended upon a showing by the person subject to the order that the grounds for discipline no longer exist or that he is rehabilitated, qualified and competent to practice nursing and that he is not likely to violate this chapter or rules adopted hereunder in the future. The board may, as a condition to withdrawal, reversal, modification or amendment of the order, require the person to pay all or part of the costs incurred by the board in proceedings upon which the order was entered.

(5) Reporting investigative information.

(a) Nothing in section 9-340C(8) and (9), Idaho Code, shall be construed as limiting the authority of the board to report current significant investigative information to the coordinated licensure information system for transmission to states that are parties to any multistate agreements or compacts regarding nurse licensure.

(b) The executive director of the board may, in the administration of this chapter, share information and otherwise cooperate with government regulatory and law enforcement agencies.

History.

I.C., § 54-1412, as added by 1977, ch. 132, § 2, p. 279; am. 1984, ch. 57, § 5, p. 101; am. and redesig. 1998, ch. 118, § 10, p. 435; am.

2001, ch. 76, § 2, p. 184; am. 2002, ch. 80, § 7, p. 178; am. 2008, ch. 67, § 2, p. 173; am. 2013, ch. 208, § 1, p. 496.

STATUTORY NOTES

Amendments.

The 2013 amendment, by ch. 208, inserted

the paragraph (a) designation in subsection (5) and added paragraph (5)(b).

CHAPTER 17

PHARMACISTS

SECTION.

- 54-1701. Short title.
- 54-1702. Legislative declaration.
- 54-1704. Practice of pharmacy.
- 54-1705. Definitions.
- 54-1707. Membership.
- 54-1719. Medications — Drugs — Devices — Other materials.
- 54-1720. Other duties — Powers — Authority.
- 54-1721. Unlawful practice.
- 54-1723A. Registration to engage in the practice of pharmacy into Idaho.
- 54-1726. Grounds for discipline.
- 54-1728. Penalties and reinstatement.
- 54-1729. Registration and licensure of facilities.

SECTION.

- 54-1730. Drug outlet application procedures.
- 54-1732. Violations and penalties.
- 54-1740. Short title. [Repealed.]
- 54-1741. Legislative declaration. [Repealed.]
- 54-1742. Definition — Out-of-state mail service pharmacy. [Repealed.]
- 54-1743. License requirements. [Repealed.]
- 54-1744. Notifications. [Repealed.]
- 54-1745. Inspections. [Repealed.]
- 54-1746. Product selection of prescribed drugs. [Repealed.]
- 54-1747. Patient communication. [Repealed.]
- 54-1748. Violations and penalties. [Repealed.]
- 54-1752. Definitions.
- 54-1761. Definitions.

54-1701. Short title. — This chapter shall be known as the “Idaho Pharmacy Act.”

History.

I.C., § 54-1701, as added by 1979, ch. 131, § 3, p. 402; am. 2013, ch. 28, § 2, p. 52.

STATUTORY NOTES

Amendments.

The 2013 amendment, by ch. 28, substituted “This chapter” for “This act.”

54-1702. Legislative declaration. — The practice of pharmacy in the state of Idaho is declared a professional practice affecting the health, safety and welfare of the public and is subject to regulation and control in the public interest. It is further declared to be a matter of public interest and concern that the practice of pharmacy, as defined in this chapter, merits and receives the confidence of the public and that only qualified persons be permitted to engage in the practice of pharmacy in or into the state of Idaho. This chapter shall be liberally construed to carry out these objects and purposes.

History.

I.C., § 54-1702, as added by 1979, ch. 131, § 3, p. 402; am. 2013, ch. 28, § 3, p. 52.

STATUTORY NOTES

Amendments.

The 2013 amendment, by ch. 28, inserted “or into” near the end of the second sentence

and substituted “This chapter” for “This act” at the beginning of the last sentence.

54-1704. Practice of pharmacy. — “Practice of pharmacy” means:

- (1) The interpretation, evaluation and dispensing of prescription drug orders;
- (2) Participation in drug and device selection, drug administration, prospective and retrospective drug reviews and drug or drug-related research;
- (3) The provision of patient counseling and the provision of those acts or services necessary to provide pharmaceutical care;
- (4) The responsibility for:
 - (a) Compounding and labeling of drugs and devices, except labeling by a manufacturer, repackager or distributor of nonprescription drugs and commercially packaged legend drugs and devices;
 - (b) Proper and safe storage of drugs and devices, and maintenance of proper records for them; and
 - (c) The offering or performing of those acts, services, operations or transactions necessary to the conduct, operation, management and control of pharmacy;
- (5) The prescribing of:
 - (a) Dietary fluoride supplements when prescribed according to the Amer-

ican dental association's recommendations for persons whose drinking water is proven to have a fluoride content below the United States department of health and human services' recommended concentration; and

(b) Agents for active immunization when prescribed for susceptible persons twelve (12) years of age or older for the protection from communicable disease.

History.

I.C., § 54-1704, as added by 1979, ch. 131, § 2, p. 748; am. 2011, ch. 264, § 1, p. 709; am. § 3, p. 402; am. 1992, ch. 179, § 1, p. 564; am. 2013, ch. 28, § 4, p. 52.

STATUTORY NOTES

Amendments.

The 2013 amendment, by ch. 28, added the subsection designations; substituted "prospective and retrospective drug reviews and drug or drug-related research" for "drug regimen reviews and drug or drug-related re-

search; the practice of telepharmacy within and across state lines" in subsection (2).

Compiler's Notes.

For more on fluoride content of drinking water, see <http://www.cdc.gov/fluoridation>.

54-1705. Definitions. — In this chapter:

(1) "Board of pharmacy" or "board" means the Idaho state board of pharmacy.

(2) "Central drug outlet" means a resident or nonresident pharmacy, drug outlet, or business entity employing or contracting pharmacists to perform centralized pharmacy services.

(3) "Central pharmacist" means a pharmacist performing centralized pharmacy services.

(4) "Centralized pharmacy services" means the processing by a central drug outlet or central pharmacist of a request from another pharmacy to fill, refill, or dispense a prescription drug order, perform processing functions or provide cognitive or pharmaceutical care services. Each function may be performed by the same or different persons and at the same or different locations.

(5) "Compounding" means the act of incorporating two (2) or more substances to create a finished drug product.

[(6)](3)(5) "Counseling" or "counsel" means the effective communication by the pharmacist of information as set out in this chapter, to the patient or caregiver, in order to improve therapeutic outcomes by maximizing proper use of prescription drugs and devices. Specific areas of counseling shall include, but are not limited to:

- (a) Name and strength and description of the drug;
- (b) Route of administration, dosage, dosage form, continuity of therapy and refill information;
- (c) Special directions and precautions for preparation, administration, storage and use by the patient as deemed necessary by the pharmacist;
- (d) Side effects or adverse effects and interactions and therapeutic contraindications that may be encountered, including their avoidance, which may interfere with the proper use of the drug or device as was intended by the prescriber, and the action required if they occur;

- (e) Techniques for self-monitoring drug therapy; and
- (f) Action to be taken in the event of a missed dose.

[(7)](6) "Deliver" or "delivery" means the actual, constructive or attempted transfer of a drug or device from one (1) person to another, whether or not for a consideration.

[(8)](7) "Device" means an instrument, apparatus, implement, machine, contrivance, implant, in vitro reagent or other similar related article including any component part or accessory which is:

- (a) Recognized in the official United States Pharmacopoeia or official National Formulary, other drug compendia or any supplement to them;
- (b) Intended for use in the diagnosis of disease or other conditions, or the cure, mitigation, treatment or prevention of disease in man or other animal;
- (c) Intended to affect the structure or any function of the body of man or other animal, and which does not achieve any of its principal intended purposes through chemical action within or on the body of man or other animal, and which is not dependent upon being metabolized for the achievement of any of its principal intended purposes.

[(9)](8) "Dispense" or "dispensing" means the preparation and delivery of a drug pursuant to a lawful prescription drug order of a practitioner in a suitable container appropriately labeled for subsequent administration to or use by a patient or other individual entitled to receive the prescription.

[(10)](9) "Distribute" means the delivery of a drug other than by administering or dispensing.

[(11)](10) "Drug" means:

- (a) Articles recognized as drugs in the official United States Pharmacopoeia, official National Formulary, official Homeopathic Pharmacopoeia, other drug compendia or any supplement to any of them;
- (b) Articles intended for use in the diagnosis, cure, mitigation, treatment or prevention of disease in man or other animal;
- (c) Articles, other than food, intended to affect the structure or any function of the body of man or other animals; and
- (d) Articles intended for use as a component of any articles specified in paragraph (a), (b) or (c) of this subsection.

[(12)](11) "Drug order" means a prescription drug order issued in the unique form and manner permitted for a patient or resident of an institutional facility or as permitted for other purposes as defined in rules. Unless specifically differentiated, state law applicable to a prescription drug order is also applicable to a drug order.

[(13)](12) "Drug outlets" means all resident or nonresident pharmacies, business entities and other facilities where employees or personnel are engaged in the practice of pharmacy, in the provision of pharmaceutical care, or in the dispensing, delivering, distributing or manufacturing of drugs or devices in or into Idaho.

[(14)](13) "Extern" means a bona fide student enrolled in an approved school or college of pharmacy who has not received his first professional degree in pharmacy.

[(15)](14) "Externship" means a structured practical experience program in pharmacy administered by a school or college of pharmacy.

[(16)](15) "Institutional facility" means a facility for which its primary purpose is to provide a physical environment for patients to obtain health care services and in which patients spend a majority of their time, as may be further defined by board rules.

[(17)](16) "Intern" means any person who has completed a course of study at an approved school or college of pharmacy, received the first professional degree in pharmacy and is registered with the board as a pharmacist intern. Interns must register with the board prior to commencement of an internship program.

[(18)](17) "Internship" means a postgraduate practical experience program under the supervision of a preceptor.

[(19)](18) "Investigational or new drug" means any drug which is limited by state or federal law to use under professional supervision of a practitioner authorized by law to prescribe or administer such drug.

[(20)](19) "Labeling" means the process of preparing and affixing of a label to any drug container, exclusive however, of the labeling by a manufacturer, packer or distributor of a nonprescription drug or commercially packaged legend drug or device. Any such label shall include all information required by federal and state law.

[(21)](20) "Limited service outlet" means a resident or nonresident facility or business entity that is subject to registration by the board, pursuant to section 54-1729, Idaho Code, and has employees or personnel engaged in the practice of pharmacy, in the provision of pharmaceutical care, or in the dispensing, delivering, distributing or manufacturing of drugs or devices but is not a retail pharmacy, institutional facility, manufacturer, wholesaler, veterinary drug outlet, nonresident central drug outlet or mail service pharmacy.

[(22)](21) "Mail service pharmacy" means a nonresident pharmacy that ships, mails or delivers by any lawful means a dispensed legend drug to residents in this state pursuant to a legally issued prescription drug order and ensures the provision of corresponding related pharmaceutical care services required by law.

[(23)](22) "Manufacture" means the production, preparation, propagation, compounding, conversion or processing of a device or a drug, either directly or indirectly by extraction from substances of natural origin or independently by means of chemical synthesis or by a combination of extraction and chemical synthesis and includes any packaging or repackaging of the substance or labeling or relabeling of its container, except that this term does not include the preparation or compounding of a drug by an individual for his own use or the preparation, compounding, packaging or labeling of a drug:

(a) By a pharmacist or practitioner as an incident to his administering, dispensing or, as authorized by board rule, distributing of a drug in the course of his professional practice; or

(b) By a practitioner or by his authorization under his supervision for the purpose of or as an incident to research, teaching or chemical analysis and not for sale.

[(24)](23) "Manufacturer" means a person who by compounding, cultivating, harvesting, mixing or other process, produces or prepares legend drugs,

and includes persons who prepare such drugs in dosage forms by mixing, compounding, encapsulating, entableting, or other process, or who packages or repackages such drugs, but does not include pharmacists or practitioners in the practice of their profession.

[(25)](24) "Nonprescription drugs" means medicines or drugs which may be sold without a prescription drug order and which are prepackaged for use by the consumer and labeled in accordance with state and federal law.

[(26)](25) "Nonresident" means a person or business entity located in the District of Columbia or a state other than Idaho that practices pharmacy including, but not limited to, pharmaceutical care services into Idaho.

[(27)](26) "Person" means an individual, corporation, partnership, association or any other legal entity.

[(28)](27) "Pharmaceutical care" means drug therapy and other pharmaceutical patient care services intended to achieve outcomes related to the cure or prevention of a disease, elimination or reduction of a patient's symptoms, or arresting or slowing of a disease process as defined in the rules of the board.

[(29)](28) "Pharmacist" means an individual licensed by this state to engage in the practice of pharmacy or a pharmacist registered by this state who is located in another state or the District of Columbia and is engaged in the practice of pharmacy into Idaho, unless exempted.

[(30)](29) "Pharmacist-in-charge" (PIC) means a pharmacist whose qualifications, responsibilities and reporting requirements are defined in rule.

[(31)](30) "Pharmacy" means any facility, department or other place where prescription drug orders are filled or compounded and prescriptions are sold, dispensed, offered or displayed for sale, which has, as its principal purpose, the dispensing of drug and health supplies intended for the general health, welfare and safety of the public.

[(32)](31) "Practitioner" means a person licensed in this state and permitted by such license to dispense, conduct research with respect to or administer drugs in the course of professional practice or research in this state.

[(33)](32) "Precursor" means a substance, other than a legend drug which is an immediate chemical intermediate that can be processed or synthesized into a legend drug, and is used or produced primarily for use in the manufacture of a legend drug by persons other than persons licensed to manufacture such legend drugs by the Idaho board of pharmacy, registered by the state board of health and welfare, or licensed to practice pharmacy by the Idaho board of pharmacy.

[(34)](33) "Preceptor" means a pharmacist licensed and in good standing who supervises the internship or externship training of a registered student pharmacist. The preceptor shall be actively engaged in the practice of pharmacy on a full-time employment basis.

[(35)](34) "Prescription drug or legend drug" means a drug which, under federal law is required, prior to being dispensed or delivered, to be labeled with one (1) of the following statements:

- (a) "Caution: Federal law prohibits dispensing without a prescription"; or
- (b) "Rx Only"; or

(c) "Caution: Federal law restricts this drug to use by or on the order of a licensed veterinarian"; or a drug which is required by any applicable federal or state law or regulation to be dispensed on prescription drug order only or is restricted to use by practitioners only.

[(36)](35) "Prescription drug order" means a valid order of a practitioner for a drug or device for an ultimate user of the drug or device.

[(37)](36) "Prospective drug review" includes, but is not limited to, the following activities:

(a) Evaluation of the prescription drug order for:

- (i) Known allergies;
- (ii) Rational therapy contraindications;
- (iii) Reasonable dose and route of administration; and
- (iv) Reasonable directions for use.

(b) Evaluation of the prescription drug order for duplication of therapy.

(c) Evaluation of the prescription drug order for interactions:

- (i) Drug-drug;
- (ii) Drug-food; and
- (iii) Drug-disease.

(d) Evaluation of the prescription drug order for proper utilization:

- (i) Over or under utilization; and
- (ii) Abuse/misuse.

[(38)](37) "Record" means all papers, letters, memoranda, notes, prescriptions, drug orders, invoices, statements, patient medication charts or files, computerized records or other written indicia, documents or objects which are used in any way in connection with the purchase, sale or handling of any drug or device.

[(39)](38) "Sale" means every sale and includes:

- (a) Manufacturing, processing, transporting, handling, packaging or any other production, preparation or repackaging;
- (b) Exposure, offer, or any other proffer;
- (c) Holding, storing or any other possession;
- (d) Dispensing, giving, delivering or any other supplying; and
- (e) Applying, administering or any other usage.

[(40)](39) "Warehouseman" means a person who stores legend drugs for others and who has no control over the disposition of such drugs except for the purpose of such storage.

[(41)](40) "Wholesaler" means a person engaged in the business of distributing legend drugs that he himself has not produced or prepared, to persons included in any of the classes named in subsection (2)(a) through (f) of section 54-1734, Idaho Code.

History.

I.C., § 54-1705, as added by 1979, ch. 131, § 3, p. 402; am. 1989, ch. 193, § 14, p. 475; am. 1992, ch. 179, § 2, p. 564; am. 1993, ch. 49, § 2, p. 126; am. 2000, ch. 103, § 1, p. 227; am. 2000, ch. 274, § 132, p. 799; am. 2002, ch. 26, § 1, p. 29; am. 2006, ch. 290, § 1, p. 888; am. 2008, ch. 51, § 1, p. 124; am. 2009, ch. 244, § 3, p. 748; am. 2011, ch. 135, § 2, p. 375; am. 2013, ch. 28, § 5, p. 52; am. 2013, ch. 270, § 1, p. 698.

STATUTORY NOTES**Amendments.**

This section was amended by two 2013 acts which appear to be compatible and have been compiled together.

The 2013 amendment, by ch. 28, rewrote the section, adding the definitions for "central drug outlet", "central pharmacist", "centralized pharmacy services", "mail service pharmacy", "nonresident", "pharmacist-in-charge" and deleting the definitions for "practice of telepharmacy", "practice of telepharmacy across state line", and "preceptor site."

The 2013 amendment, by ch. 270, inserted present subsection (5), and renumbered the subsequent subsections accordingly; and substituted "dispensing or, as authorized by board rule, distributing" for "or, dispensing" in present paragraph (22)(a).

Compiler's Notes.

The United States Pharmacopoeia, referred

to in paragraphs (7)(a) [(8)(a)] and (10)(a) [(11)(a)], is a non-governmental official public standards-setting authority for prescription and over-the-counter medicines. See <http://www.usp.org>.

The National Formulary, referred to in paragraphs (7)(a) [(8)(a)] and (10)(a) [(11)(a)], contains standards for medicines, dosage forms, drug substances, excipients, medical devices, and dietary supplements. See <http://www.usp.org/USPNF>.

The Homeopathic Pharmacopoeia of the United States, referred to in paragraph (10)(a) [(11)(a)], is the official compendium for homeopathic drug in the United States. See <http://hpus.com>.

The bracketed designations in this section are a result of the reconciliation of the multiple 2013 amendments.

54-1707. Membership. — The board of pharmacy shall consist of five (5) members. One (1) member shall be a representative of the public, and four (4) members shall be licensed pharmacists who possess the qualifications specified in section 54-1708, Idaho Code. The board of pharmacy shall have diverse pharmacy practice experience, with at least one (1) member having substantial experience in retail pharmacy and at least one (1) member having substantial experience in hospital pharmacy.

History.

I.C., § 54-1707, as added by 1979, ch. 131, § 3, p. 402; am. 2013, ch. 65, § 1, p. 161.

STATUTORY NOTES**Amendments.**

The 2013 amendment, by ch. 65, added the last sentence.

54-1719. Medications — Drugs — Devices — Other materials. —

The board of pharmacy shall also have the following responsibilities in regard to medications, drugs, devices and other materials used in this state in the diagnosis, mitigation and treatment or prevention of injury, illness and disease:

(1) The regulation of the sale at retail and the dispensing of medications, drugs, devices and other materials, including the method of dispensing in institutional facilities, and including the right to seize such drugs, devices and other materials found to be detrimental to the public health and welfare by the board after appropriate hearing as required under the administrative procedure act;

(2) The specifications of minimum professional and technical equipment, environment, supplies and procedures for the compounding, dispensing and

distribution of such medications, drugs, devices and other materials within the practice of pharmacy;

(3) The control of the purity and quality of such medications, drugs, devices and other materials within the practice of pharmacy;

(4) The issuance and renewal of certificates of registration of drug outlets for purposes of ascertaining those persons engaged in the manufacture and distribution of drugs.

History.

I.C., § 54-1719, as added by 1979, ch. 131, § 3, p. 402; am. 1990, ch. 144, § 1, p. 324; am.

2013, ch. 270, § 2, p. 698.

STATUTORY NOTES

Amendments.

The 2013 amendment, by ch. 270, substituted "compounding, dispensing and distribution" for "compounding and/or dispensing" in paragraph (2).

Compiler's Notes.

The administrative procedures act, referred to in subdivision (1) of this section, is compiled as § 67-5201 et seq.

54-1720. Other duties — Powers — Authority. — The board of pharmacy shall have such other duties, powers, and authority as may be necessary to the enforcement of this chapter and to the enforcement of board rules made pursuant thereto, which shall include, but are not limited to, the following:

(1) The board may join such professional organizations and associations organized exclusively to promote the improvement of the standards of the practice of pharmacy for the protection of the health and welfare of the public and whose activities assist and facilitate the work of the board.

(2) In addition to any statutory requirements, the board may require such surety bonds as it deems necessary to guarantee the performance and discharge of the duties of any officer or employee receiving and disbursing funds.

(3) The executive director of the board shall keep the seal of the board and shall affix it only in such manner as may be prescribed by the board.

(4) On or before the 60th day after the last day of each state fiscal year, the board shall submit to the governor a report summarizing its proceedings and activities during that fiscal year, together with a report of all moneys received and disbursed by the board. Such reports or comprehensive summaries or abstracts thereof, as determined by the board shall be made available to the public.

(5)(a) The board shall determine the fees to be collected for:

(i) Examinations and reexaminations, which fee shall not exceed two hundred fifty dollars (\$250);

(ii) The issuance of licenses, which fee shall not exceed two hundred fifty dollars (\$250);

(iii) The issuance and renewal of certificates of registration, which fee shall not exceed one hundred dollars (\$100), except the fee for nonresident registrations shall not exceed five hundred dollars (\$500) for initial registration and two hundred fifty dollars (\$250) thereafter for annual renewals.

(b) All fees or fines which shall be paid under the provisions of this chapter shall be paid over by the board to the treasurer of the state of Idaho, and shall be held by the state treasurer in the pharmacy account, which shall be paid out by the state treasurer upon warrant drawn by the state controller against said account. The state controller is hereby authorized, upon presentation of the proper vouchers of claims against the state, approved by the said board and the state board of examiners, as provided by law, to draw his warrant upon said account.

(6) The board may receive and expend moneys in addition to its annual appropriations, from parties other than the state, provided:

(a) Such moneys are awarded for the pursuit of a specific objective which the board is authorized to accomplish by this chapter, or which the board is qualified to accomplish by reason of its jurisdiction or professional expertise;

(b) Such moneys are expended for the pursuit of the objective for which they are awarded;

(c) Activities connected with or occasioned by the expenditures of such moneys do not interfere with or impair the performance of the board's duties and responsibilities and do not conflict with the exercise of the board's powers as specified by this chapter;

(d) Such moneys are kept in a separate, special state account; and

(e) Periodic reports are made to the administrator, division of financial management, concerning the board's receipt and expenditure of such moneys.

(7) The board shall assign to each drug outlet under its jurisdiction a uniform state number.

(8) The board or its authorized representatives shall also have power to investigate and gather evidence concerning alleged violations of the provisions of this chapter or of the rules of the board.

(9)(a) Notwithstanding anything in this chapter to the contrary, whenever a duly authorized representative of the board finds or has probable cause to believe that any drug, or device is adulterated or misbranded within the meaning of the Idaho food, drug and cosmetic act, he shall affix to such drug or device a tag or other appropriate marking giving notice that such article is or is suspected of being adulterated or misbranded, has been detained or embargoed and warning all persons not to remove or dispose of such article by sale or otherwise until provision for removal or disposal is given by the board, its agent or the court. No person shall remove or dispose of such embargoed drug or device by sale or otherwise without the permission of the board or its agent or, after summary proceedings have been instituted, without permission from the court.

(b) When a drug or device detained or embargoed under paragraph (a) of this subsection (9) has been declared by such representative to be adulterated or misbranded, the board shall, as soon as practical thereafter, petition the judge of the district court in whose jurisdiction the article is detained or embargoed for an order for condemnation of such article. If the judge determines that the drug or device so detained or embargoed is not adulterated or misbranded, the board shall direct the immediate removal of the tag or other marking.

(c) If the court finds the detained or embargoed drug or device is adulterated or misbranded, such drug or device, after entry of the decree, shall be destroyed at the expense of the owner under the supervision of a board representative and all court costs and fees, storage and other proper expense shall be borne by the owner of such drug or device. When the adulteration or misbranding can be corrected by proper labeling or processing of the drug or device, the court, after entry of the decree and after such costs, fees and expenses have been paid and a good and sufficient bond has been posted, may direct that such drug or device be delivered to the owner thereof for such labeling or processing under the supervision of a board representative. Expense of such supervision shall be paid by the owner. Such bond shall be returned to the owner of the drug or device on representation to the court by the board that the drug or device is no longer in violation of the embargo and the expense of supervision has been paid.

(d) It is the duty of the attorney general to whom the board reports any violation of this subsection to cause appropriate proceedings to be instituted in the proper court without delay and to be prosecuted in the manner required by law. Nothing in this subsection (9) shall be construed to require the board to report violations whenever the board believes the public's interest will be adequately served in the circumstances by a suitable written notice or warning.

(10) Except as otherwise provided to the contrary, the board shall exercise all of its duties, powers and authority in accordance with the administrative procedure act.

(11)(a) For the purpose of any proceedings held before the board as authorized by law, including the refusal, nonrenewal, revocation or suspension of licenses, registrations or certifications authorized by this chapter, or the imposition of fines or reprimands on persons holding such licenses, certification or registrations, the board may subpoena witnesses and compel their attendance, and may also at such time require the production of books, papers, documents or other memoranda. In any such proceeding before the board, any member of the board, or its designee, may administer oaths or affirmations to witnesses so appearing.

(b) If any person shall refuse to obey a subpoena so issued, or refuse to testify or produce any books, papers or documents called for by said subpoena, the board may make application to the district court of the county in which the proceeding is held, for an order of the court requiring the person to appear before the court, and to show cause why the person should not be compelled to testify, to produce such books, papers, memoranda or other documents required by the subpoena, or otherwise comply with its terms. The application shall set forth the action theretofore taken by the board to compel the attendance of the witness, the circumstances surrounding the failure of the witness to attend or otherwise comply with the subpoena, together with a brief statement of the reasons why compliance with the subpoena is necessary to the proceeding before the board.

(c) Upon the failure of a person to appear before the court at the time and place designated by it, the court may enter an order without further

proceedings requiring the person to comply with the subpoena. Any person failing or refusing to obey such order of the court shall be punished for contempt of court as in other cases provided.

History.

I.C., § 54-1720, as added by 1979, ch. 131, § 3, p. 402; am. 1980, ch. 354, § 1, p. 915; am.

1985, ch. 152, § 2, p. 405; am. 1994, ch. 180, § 100, p. 420; am. 1994, ch. 348, § 1, p. 1104; am. 2013, ch. 28, § 6, p. 52.

STATUTORY NOTES**Amendments.**

The 2013 amendment, by ch. 28, substituted "this chapter" for "this act" throughout the section; rewrote paragraph (a) of subsection (5), which formerly read: "The board shall determine within thirty (30) days prior to the beginning of each state fiscal year the fees to be collected for:

"1. Examinations and reexaminations, which fee shall not exceed two hundred fifty dollars (\$250);

"2. The issuance of licenses, which fee shall not exceed two hundred fifty dollars (\$250);

"3. The issuance of certificates of registration and renewal certificates of registration, which fee shall not exceed one hundred dollars (\$100), except in the case of out-of-state mail service pharmacies licensed pursuant to section 54-1743, Idaho Code, in which case the fee shall not exceed two hundred fifty dollars (\$250);

"4. The certification of approved providers of continuing education courses, which fee shall not exceed three hundred dollars (\$300);

substituted "division of financial management" for "division of budget, policy planning and coordination" in paragraph (e) of subsection (6); and deleted "coordinated where possible with all other states which adopt the same uniform numbering system" from the end of subsection (7).

Compiler's Notes.

The Idaho food, drug and cosmetic act, referred to in subsection (9)(a) of this section, is compiled as §§ 37-113 to 37-134.

The administrative procedures act, referred to in subsection (10) of this section, is compiled as § 67-5201 et seq.

54-1721. Unlawful practice. — (1) It shall be unlawful for any person or business entity to engage in the practice of pharmacy including, but not limited to, pharmaceutical care services in or into Idaho unless licensed or registered to so practice under the provisions of this chapter, except as provided herein:

(a) Physicians, dentists, veterinarians, osteopaths or other practitioners of the healing arts who are licensed under the laws of this state may deliver and administer prescription drugs to their patients in the practice of their respective professions where specifically authorized to do so by statute of this state; and

(b) Nonresident pharmacists practicing pharmacy into Idaho who are employed by and practicing for an Idaho registered nonresident mail service pharmacy.

(2) Notwithstanding the provisions of subsection (1) of this section and any statute or rule to the contrary, persons who hold a valid and current license to practice practical or professional nursing in this state pursuant to sections 54-1407, 54-1408 and 54-1418, Idaho Code, and who are employed by one (1) of the public health districts established under section 39-408, Idaho Code, shall be permitted to engage in the labeling and delivery of refills of the following prepackaged items when such items have been prescribed to a patient by a licensed physician, licensed physician's assistant or licensed advanced practice nurse:

(a) Prenatal vitamins;

- (b) Contraceptive drugs approved by the United States food and drug administration;
- (c) Antiviral drugs approved by the United States centers for disease control and prevention for treatment of sexually transmitted infection; and
- (d) Drugs approved by the United States centers for disease control and prevention for treatment of active and latent tuberculosis.

(3) It shall be unlawful for any person, not legally licensed or registered as a pharmacist, to take, use or exhibit the title of pharmacist or the title of druggist or apothecary, or any other title or description of like import.

(4) Any person who shall be found to have unlawfully engaged in the practice of pharmacy shall be subject to a fine not to exceed three thousand dollars (\$3,000) for each offense. Each such violation of this chapter or the rules promulgated hereunder pertaining to unlawfully engaging in the practice of pharmacy shall also constitute a misdemeanor punishable upon conviction as provided in the criminal code of this state.

History.

I.C., § 54-1721, as added by 1979, ch. 131,

§ 3, p. 402; am. 2010, ch. 346, § 1, p. 904; am. 2013, ch. 28, § 7, p. 52.

STATUTORY NOTES**Amendments.**

The 2013 amendment, by ch. 28, rewrote subsection (1), which formerly read: "It shall be unlawful for any person to engage in the practice of pharmacy unless licensed to so practice under the provisions of this act; provided, however, physicians, dentists, veterinarians, osteopaths or other practitioners of the healing arts who are licensed under the laws of this state may deliver and administer

prescription drugs to their patients in the practice of their respective professions where specifically authorized to do so by statute of this state"; in subsection (2), substituted "drugs" for "medications" in paragraphs (b), (c), and (d); inserted "or registered" near the middle of subsection (3); and substituted "this chapter" for "this act" near the beginning of the last sentence in subsection (4).

54-1723A. Registration to engage in the practice of pharmacy into Idaho. —(1) To obtain a registration to practice as a pharmacist into the state of Idaho, the applicant shall:

- (a) Be licensed and in good standing in the state from which the applicant practices pharmacy;
- (b) Submit a written application in the form prescribed by the board;
- (c) Pay the fee(s) specified by the board for the issuance of the registration;
- (d) Be located in one (1) of the fifty (50) states or the District of Columbia; and
- (e) Comply with all other requirements of the board.

(2) A successful applicant for registration under this section shall be subject to the disciplinary provisions of section 54-1726, Idaho Code, the penalty provisions of section 54-1728, Idaho Code, and the rules of the board.

(3) A successful applicant for registration under this section shall comply with the board's laws and rules of this state unless compliance would violate the laws or rules in the state in which the registrant is located, except as follows:

- (a) A technician shall not exceed the practice limitations for technicians in Idaho;
- (b) A pharmacist shall only substitute drug products in accordance with Idaho law;
- (c) A pharmacist shall only select drug products in accordance with Idaho law; and
- (d) A pharmacist shall not exceed the pharmacy staffing ratio, as defined in rule.

(4) Renewal shall be required annually and submitted to the board no later than the thirtieth day of June. The board shall specify by rule the procedures to be followed and the fees to be paid for renewal of registration.

History.

I.C., § 54-1723A, as added by 2009, ch. 244,

§ 4, p. 748; am. 2010, ch. 116, § 1, p. 242; am.

2013, ch. 28, § 8, p. 52.

STATUTORY NOTES**Amendments.**

The 2013 amendment, by ch. 28, substituted “practice of pharmacy into Idaho” for “practice of telepharmacy across state lines”

in the section heading and rewrote the section to the extent that a detailed comparison is impracticable, adding subsection (3).

54-1726. Grounds for discipline. — (1) The board of pharmacy may refuse to issue or renew, or may suspend, revoke or restrict the license or registration of any person, pursuant to the procedures set forth in chapter 52, title 67, Idaho Code, upon one (1) or more of the following grounds:

- (a) Unprofessional conduct as that term is defined by the rules of the board;
- (b) Incapacity of a nature that prevents a pharmacist from engaging in the practice of pharmacy with reasonable skill, competence and safety to the public;
- (c) Being found guilty, convicted or having received a withheld judgment or suspended sentence by a court of competent jurisdiction in this state or any other state of one (1) or more of the following:
 - (i) Any felony;
 - (ii) Any act involving moral turpitude, gross immorality or which is related to the qualifications, functions or duties of a licensee; or
 - (iii) Violations of the pharmacy or drug laws of this state or rules pertaining thereto, or of statutes, rules or regulations of any other state, or of the federal government;
- (d) Fraud or intentional misrepresentation by a licensee in securing the issuance or renewal of a license.
- (e) Engaging or aiding and abetting an individual to engage in the practice of pharmacy without a license, or falsely using the title of pharmacist.
- (f) Being found by the board to be in violation of any of the provisions of this chapter, chapter 27, title 37, Idaho Code, or rules adopted pursuant to either chapter.
- (2) Nonresident licensees and registrants shall be held accountable to the

board for violations by its agents and employees and subject to the same grounds for discipline and penalties for their actions as set forth herein.

History.

I.C., § 54-1726, as added by 1979, ch. 131, § 3, p. 402; am. 1985, ch. 152, § 3, p. 405; am.

1988, ch. 12, § 1, p. 14; am. 1993, ch. 216,

§ 70, p. 587; am. 2013, ch. 28, § 9, p. 52.

STATUTORY NOTES**Amendments.**

The 2013 amendment, by ch. 28, added the subsection (1) designation; substituted "li-

cence or registration" for "licenses" in the introductory language of subsection (1); and added subsection (2).

54-1728. Penalties and reinstatement. — (1) Upon the finding of the existence of grounds for discipline of any person or business entity holding a license or registration, seeking a license or registration, or a renewal license or registration under the provisions of this chapter, the board of pharmacy may impose one (1) or more of the following penalties:

- (a) Suspension of the offender's license or registration for a term to be determined by the board;
- (b) Revocation of the offender's license or registration;
- (c) Restriction of the offender's license or registration to prohibit the offender from performing certain acts or from engaging in the practice of pharmacy in a particular manner for a term to be determined by the board;
- (d) Refusal to renew offender's license or registration;
- (e) Placement of the offender on probation and supervision by the board for a period to be determined by the board;
- (f) Imposition of an administrative fine not to exceed two thousand dollars (\$2,000) plus costs of prosecution and administrative costs of bringing the action including, but not limited to, attorney's fees and costs and costs of hearing transcripts.

(2) The board may take any action against a nonresident licensee or registrant that the board can take against a resident licensee or registrant for violation of the laws of this state or the state in which it resides.

(3) The board may report any violation by a nonresident licensee or registrant, or its agent or employee, of the laws and rules of this state, the state in which it resides or the United States to any appropriate state or federal regulatory or licensing agency including, but not limited to, the regulatory agency of the state in which the nonresident licensee or registrant is a resident.

(4) The board may elect to not initiate an administrative action under Idaho law against a nonresident licensee or registrant upon report of a violation of law or rule of this state if the licensee's or registrant's home state commences an action for the violation complained of; provided however, that the board may elect to initiate an administrative action if the home state action is unreasonably delayed or the home state otherwise fails to take appropriate action for the reported violation.

(5) The suspension, revocation, restriction or other action taken against a licensee or registrant by a state licensing board with authority over a

licensee's or registrant's professional license or registration or by the drug enforcement administration may result in the board's issuance of an order likewise suspending, revoking, restricting or otherwise affecting the license or registration in this state, without further proceeding, but subject to the effect of any modification or reversal by the issuing state or the drug enforcement administration.

(6) Any person whose license to practice pharmacy in this state has been suspended, revoked or restricted pursuant to this chapter, or any drug outlet whose certificate of registration has been suspended, revoked or restricted pursuant to this chapter, whether voluntarily or by action of the board, shall have the right, at reasonable intervals, to petition the board for reinstatement of such license. Such petition shall be made in writing and in the form prescribed by the board. Upon investigation and hearing, the board may in its discretion grant or deny such petition, or it may modify its original finding to reflect any circumstances which have changed sufficiently to warrant such modifications.

(7) Nothing herein shall be construed as barring criminal prosecutions for violations of the act where such violations are deemed as criminal offenses in other statutes of this state or of the United States.

(8) All final decisions by the board shall be subject to judicial review pursuant to the procedures of the administrative procedure act.

History.

I.C., § 54-1728, as added by 1979, ch. 131, § 3, p. 402; am. 1985, ch. 152, § 4, p. 405; am.

1995, ch. 42, § 1, p. 63; am. 2013, ch. 28, § 10, p. 52.

STATUTORY NOTES

Amendments.

The 2013 amendment, by ch. 28, added present subsections (2) to (5) and redesignated former subsections (2) to (4) as present subsections (6) to (8); substituted "this chapter" for "this act" in the introductory paragraph in subsection (1) and twice in present subsection (6); in the introductory paragraph in subsection (1), inserted "or business entity"

near the beginning and "or registration" three times; and inserted "or registration" in paragraphs (1)(a) to (1)(d).

Compiler's Notes.

The administrative procedures act, referred to in subsection (8) of this section, is compiled as § 67-5201 et seq.

54-1729. Registration and licensure of facilities. — (1) All drug or device outlets doing business in or into Idaho shall:

- (a) If a nonresident, be licensed or registered and in good standing in the applicant's state of residence;
- (b) Submit a written application in the form prescribed by the board;
- (c) Pay the fee or fees specified by the board for the issuance of the registration or license;
- (d) Be located in one (1) of the fifty (50) states or the District of Columbia; and
- (e) Have a PIC or director who is licensed or registered by the board, except manufacturers, wholesalers, veterinary drug outlets and limited service outlets without a pharmacy.

(2) Each drug or device outlet shall apply for a certificate of registration or a license in one (1) of the following classifications:

- (a) Retail pharmacy;
- (b) Institutional facility;
- (c) Manufacturer;
- (d) Wholesaler;
- (e) Veterinary drug outlet;
- (f) Nonresident central drug outlet;
- (g) Mail service pharmacy;
- (h) Limited service outlet.

(3) The board shall establish by rule under the powers granted to it under sections 54-1718 and 54-1719, Idaho Code, the criteria which each outlet, that has employees or personnel engaged in the practice of pharmacy, must meet to qualify for registration or licensure in each classification designated in subsection (2) of this section. The board may issue various types of certificates with varying restrictions to such outlets designated in subsection (2) of this section where the board deems it necessary by reason of the type of outlet requesting a certificate.

(4) It shall be lawful for an outlet registered or licensed under this section to sell and distribute nonprescription drugs. Outlets engaging in the sale and distribution of such items shall not be deemed to be improperly engaged in the practice of pharmacy. No rule will be adopted by the board under this chapter which shall require the sale of nonprescription drugs by a pharmacist or under the supervision of a pharmacist or otherwise apply to or interfere with the sale and distribution of such medicines.

(5) If the regulatory board or licensing authority of the state in which a nonresident outlet is located fails or refuses to conduct an inspection or fails to obtain records or reports required by the board, upon reasonable notice to the nonresident outlet, the board may conduct an inspection. Nonresident outlets shall also pay the actual costs of the out-of-state inspection of the outlet, including the transportation, lodging and related expenses of the board's inspector.

(6) A successful applicant for registration under the provisions of this section shall be subject to the disciplinary provisions of section 54-1726, Idaho Code, the penalty provisions of section 54-1728, Idaho Code, and the rules of the board.

(7) A successful applicant for registration under the provisions of this section shall comply with the board's laws and rules of this state unless compliance would violate the laws or rules in the state in which the registrant is located, except as follows:

- (a) A technician shall not exceed the practice limitations for technicians in Idaho;
- (b) A pharmacist shall only substitute drug products in accordance with the board's laws and rules;
- (c) A pharmacist shall only select drug products in accordance with the board's laws and rules; and
- (d) A pharmacy shall not exceed the pharmacy staffing ratio, as defined in rule.

(8) Renewal shall be required annually and submitted to the board no later than the thirtieth day of June. The board shall specify by rule the

procedures to be followed and the fees to be paid for renewal of registration or licensure.

History.

I.C., § 54-1729, as added by 1979, ch. 131, § 3, p. 402; am. 1985, ch. 21, § 1, p. 33; am.

2009, ch. 244, § 5, p. 748; am. 2011, ch. 135, § 3, p. 375; am. 2013, ch. 28, § 11, p. 52.

STATUTORY NOTES**Amendments.**

The 2013 amendment, by ch. 28, rewrote subsection (1), which formerly read: "All drug or device outlets doing business in or into Idaho shall annually register with or be licensed by, as applicable, the board of pharmacy"; substituted "Nonresident central drug outlet" for "Telepharmacy across state lines" in paragraph (2)(f); in the last sentence in subsection (3), substituted "such outlets designated in subsection (2) of this section" for "such limited service outlets in subsection (2)" near the middle and deleted "drug" preceding "outlet" near the end; in subsection (4), substituted "an outlet" for "a drug outlet" in the first sentence, deleted "Drug" from the beginning of the second sentence, and deleted "li-

censed" preceding "pharmacist" twice in the last sentence; rewrote subsection (5), which formerly read: "Drug outlets registered under subsection (2)(f) of this section shall pay the same registration fee as those registering under subsection (2)(b) of this section, but shall also pay the actual costs of the out-of-state inspection of the drug outlet as may be required by the board, including the transportation, lodging and related expenses of the board's inspector. Nothing in this section shall preclude the board, in lieu of an inspection by the board, from relying on an inspection of the drug outlet conducted by the regulatory authority of the state within which the drug outlet is located"; and added subsections (6) to (8).

54-1730. Drug outlet application procedures. — (1) The board shall specify by rule the registration procedures to be followed including, but not limited to, specification of forms for use in applying for such certificates of registration and times, places and fees for filing such application; provided however, the annual fee for an original or renewal certificate shall not exceed one hundred dollars (\$100), except the fee for nonresident pharmacies or outlets shall not exceed five hundred dollars (\$500) for initial registration and two hundred fifty dollars (\$250) thereafter for annual renewals.

(2) Applications for certificates of registration shall include the following information about the proposed outlet:

(a) Ownership;

(b) Location;

(c) Identity of pharmacist licensed or registered to practice in the state, who shall be the pharmacist in charge of the outlet, where one (1) is required by this chapter, and such further information as the board may deem necessary.

(3) Certificates of registration issued by the board pursuant to this chapter shall not be transferable or assignable.

(4) The board shall specify by rule minimum standards for the professional responsibility in the conduct of any outlet that has employees or personnel engaged in the practice of pharmacy. The board is specifically authorized to require that the portion of the facility to which such certificate of registration applies be operated only under the direct supervision of no less than one (1) pharmacist licensed to practice in this state and not otherwise, and to provide such other special requirements as deemed necessary.

History.

I.C., § 54-1730, as added by 1979, ch. 131, § 3, p. 402; am. 2013, ch. 28, § 12, p. 52.

STATUTORY NOTES**Amendments.**

The 2013 amendment, by ch. 28, added "Drug outlet" at the beginning of the section heading; in subsection (1), deleted "or regulation" preceding "the registration procedures" near the beginning and added "except the fee for nonresident pharmacies or outlets shall not exceed five hundred dollars (\$500) for initial registration and two hundred fifty dollars (\$250) thereafter for annual renewals" at the end; in subsection (2), deleted "drug"

preceding "outlet" at the end of the introductory paragraph and near the middle of paragraph (c); in paragraph (2)(c), inserted "or registered" near the beginning and substituted "this chapter" for "this act" near the middle; substituted "this chapter" for "this act" in subsection (3); in the first sentence in subsection (4), deleted "and regulation" preceding "minimum standards" near the beginning and deleted "drug" preceding "outlet" near the middle.

54-1732. Violations and penalties. — (1) No drug outlet designated in section 54-1729, Idaho Code, shall be operated until a certificate of registration has been issued to said facility by the board. Upon the finding of a violation of this subsection, the board may impose one (1) or more of the penalties enumerated in section 54-1728, Idaho Code.

(2) Reinstate of a certificate that has been suspended, revoked or restricted by the board may be granted in accordance with the procedures specified in section 54-1728(6), Idaho Code.

(3) The following acts, or the failure to act, and the causing of any such act or failure are unlawful:

(a) The sale, delivery or administration of any prescription drug or legend drug unless:

(i) Such legend drug is dispensed or delivered by a pharmacist upon an original prescription, drug order or prescription drug order by a practitioner in good faith in the course of his practice. Any person violating the provisions of this subparagraph shall be guilty of a felony, and on conviction thereof shall be imprisoned in the state penitentiary for a term not to exceed three (3) years, or punished by a fine of not more than five thousand dollars (\$5,000) or by both such fine and imprisonment.

(ii) There is affixed, in the case of a legend drug dispensed or delivered by a pharmacist, to the immediate container in which such drug is delivered a label bearing the name, address, and phone number of the establishment from which such drug was dispensed; the date on which the prescription for such drug was filled; the number of such prescription as filed in the prescription files of the pharmacist who filled the prescription; the name of the practitioner who prescribed such drug; the name of the patient, and if such drugs were prescribed for an animal, a statement of the species of the animal; and the directions for the use of the drug as contained in the prescription; or in the case of a legend drug delivered or administered by a practitioner in the course of his practice, the immediate container in which such drug is delivered bears a label on which appears the directions for use of such drug; the name and address of such practitioner; the name of the patient; and if such drug

is prescribed for an animal, a statement of the species of the animal. Any person violating this subparagraph shall be guilty of a misdemeanor and upon conviction thereof shall be fined not more than five hundred dollars (\$500). Nothing in this subparagraph prohibits a practitioner from delivering professional samples of legend drugs in their original containers in the course of his practice when oral directions for use are given at the time of such delivery.

(b) The refilling of any prescription or drug order for a legend drug except as designated on the prescription or drug order, or by the authorization of the practitioner. Any person guilty of violating this paragraph shall be guilty of a misdemeanor and upon conviction thereof shall be incarcerated in the county jail for a term not to exceed one (1) year, or punished by a fine of not more than one thousand dollars (\$1,000) or by both such fine and incarceration.

(c) The possession or use of a legend drug or a precursor by any person unless such person obtains such drug on the prescription or drug order of a practitioner. Any person guilty of violating this paragraph shall be guilty of a misdemeanor and upon conviction thereof shall be incarcerated in the county jail for a term not to exceed one (1) year, or punished by a fine of not more than one thousand dollars (\$1,000) or by both such fine and incarceration.

(d) The failure to keep records as required by the board. Any person guilty of violating this paragraph shall be guilty of a misdemeanor and upon conviction thereof shall be incarcerated in the county jail for a term not to exceed one (1) year, or punished by a fine of not more than one thousand dollars (\$1,000) or by both such fine and incarceration.

(e) The refusal to make available and to accord full opportunity to check any record, as required by the board. Any person guilty of violating this paragraph shall be guilty of a misdemeanor and upon conviction thereof shall be incarcerated in the county jail for a term not to exceed one (1) year, or punished by a fine of not more than one thousand dollars (\$1,000) or by both such fine and incarceration.

(f) It is unlawful to:

(i) Obtain or attempt to obtain a legend drug or procure or attempt to procure the administration of a legend drug by fraud, deceit, misrepresentation or subterfuge; by the forgery or alteration of a prescription, drug order, or of any written order; by the concealment of a material fact; or by the use of a false name or the giving of a false address.

(ii) Communicate information to a physician in an effort unlawfully to procure a legend drug, or unlawfully to procure the administration of any such drug. Any such communication shall not be deemed a privileged communication.

(iii) Intentionally make a false statement in any prescription, drug order, order, report or record required by this chapter.

(iv) For the purpose of obtaining a legend drug to falsely assume the title of, or represent himself to be, a manufacturer, wholesaler, pharmacist, physician, dentist, veterinarian or other person.

(v) Make or utter any false or forged prescription or false drug order or forged written order.

(vi) Affix any false or forged label to a package or receptacle containing legend drugs. This subparagraph does not apply to law enforcement agencies or their representatives while engaged in enforcing state and federal drug laws.

(vii) Wholesale or retail any prescription or legend drug to any person in this state not entitled by law to deliver such drug to another.

(4) Provided however, that a veterinarian may dispense or deliver a legend drug prescribed for an animal upon the prescription, drug order, or prescription drug order of another veterinarian. The label shall comply with the provisions of subsection (3)(a)(ii) of this section, and penalties for violations of the provisions of this subsection shall be as provided in this section for like violations by a pharmacist.

(5) The ultimate user of a legend drug who has lawfully obtained such legend drug may deliver, without being registered, the legend drug to another person for the purpose of disposal of the legend drug if the person receiving the legend drug for purposes of disposal is authorized under a state or federal law or regulation to engage in such activity.

Every violation of subsection (3)(f)(i) through (vi) of this section shall be a misdemeanor and any person convicted thereof shall be incarcerated in the county jail for a term not to exceed one (1) year, or fined not more than one thousand dollars (\$1,000), or punished by both such fine and imprisonment. Any person violating subsection (3)(f)(vii) of this section is guilty of a felony, and on conviction thereof shall be imprisoned in the state penitentiary for a term not to exceed three (3) years, or punished by a fine of not more than five thousand dollars (\$5,000), or by both such fine and imprisonment.

History. 2010, ch. 113, § 1, p. 231; am. 2013, ch. 28, I.C., § 54-1732, as added by 1979, ch. 131, § 13, p. 52. § 3, p. 402; am. 1985, ch. 43, § 1, p. 90; am.

STATUTORY NOTES

Amendments.

The 2013 amendment, by ch. 28, substi-

tuted “section 54-1728(6)” for “section 54-1728(2)” near the end of subsection (2).

54-1740. Short title. [Repealed.]

Repealed by S.L. 2013, ch. 28, § 14, effective July 1, 2013. See 2013 amendments of § 54-1701 et seq.

History.

I.C., § 54-1740, as added by 1989, ch. 178, § 1, p. 438.

54-1741. Legislative declaration. [Repealed.]

Repealed by S.L. 2013, ch. 28, § 14, effective July 1, 2013. See 2013 amendments of § 54-1701 et seq.

History.

I.C., § 54-1741, as added by 1989, ch. 178, § 1, p. 438; am. 1994, ch. 348, § 2, p. 1104.

54-1742. Definition — Out-of-state mail service pharmacy. [Repealed.]

Repealed by S.L. 2013, ch. 28, § 14, effective July 1, 2013. See 2013 amendments of § 54-1701 et seq.

History.

I.C., § 54-1742, as added by 1989, ch. 178, § 1, p. 438.

54-1743. License requirements. [Repealed.]

Repealed by S.L. 2013, ch. 28, § 14, effective July 1, 2013. See 2013 amendments of § 54-1701 et seq.

History.

I.C., § 54-1743, as added by 1989, ch. 178, § 1, p. 438; am. 1994, ch. 348, § 3, p. 1104.

54-1744. Notifications. [Repealed.]

Repealed by S.L. 2013, ch. 28, § 14, effective July 1, 2013. See 2013 amendments of § 54-1701 et seq.

History.

I.C., § 54-1744, as added by 1989, ch. 178, § 1, p. 438; am. 1994, ch. 348, § 4, p. 1104.

54-1745. Inspections. [Repealed.]

Repealed by S.L. 2013, ch. 28, § 14, effective July 1, 2013. See 2013 amendments of § 54-1701 et seq.

History.

I.C., § 54-1745, as added by 1989, ch. 178, § 1, p. 438.

54-1746. Product selection of prescribed drugs. [Repealed.]

Repealed by S.L. 2013, ch. 28, § 14, effective July 1, 2013. See 2013 amendments of § 54-1701 et seq.

History.

I.C., § 54-1746, as added by 1989, ch. 178, § 1, p. 438.

54-1747. Patient communication. [Repealed.]

Repealed by S.L. 2013, ch. 28, § 14, effective July 1, 2013. See 2013 amendments of § 54-1701 et seq.

History.

I.C., § 54-1747, as added by 1989, ch. 178, § 1, p. 438.

54-1748. Violations and penalties. [Repealed.]

Repealed by S.L. 2013, ch. 28, § 14, effective July 1, 2013. See 2013 amendments of § 54-1701 et seq.

History.

I.C., § 54-1748, as added by 1989, ch. 178, § 1, p. 438; am. 1994, ch. 348, § 5, p. 1104.

54-1752. Definitions. — As used in sections 54-1751 through 54-1759, Idaho Code:

(1) "Authentication" means to affirmatively verify before any wholesale distribution of a prescription drug occurs that each transaction listed on the pedigree has occurred.

(2) "Authorized distributor of record" means a wholesale distributor with whom a manufacturer has established an ongoing relationship to distribute the manufacturer's prescription drug. An ongoing relationship is deemed to exist between such wholesale distributor and a manufacturer when the wholesale distributor, including any affiliated group of the wholesale distributor, as defined in section 1504 of the Internal Revenue Code, complies with the following:

(a) The wholesale distributor has a written agreement currently in effect with the manufacturer evidencing such ongoing relationship; and

(b) The wholesale distributor is listed on the manufacturer's current list of authorized distributors of record, which is updated by the manufacturer on no less than a monthly basis.

(3) "Chain pharmacy warehouse" means a physical location for prescription drugs that acts as a central warehouse and performs intracompany sales or transfers of such drugs to a group of chain pharmacies that have the same common ownership and control.

(4) "Colicensed partner or product" means an instance where two (2) or more parties have the right to engage in the manufacturing and/or marketing of a prescription drug, consistent with the federal food and drug administration's implementation of the prescription drug marketing act.

(5) "Drop shipment" means the sale of a prescription drug to a wholesale distributor or chain pharmacy warehouse by the manufacturer of the prescription drug, or that manufacturer's colicensed product partner, that manufacturer's third party logistics provider or that manufacturer's exclusive distributor, whereby the wholesale distributor or chain pharmacy warehouse takes title but not physical possession of such prescription drug and the wholesale distributor invoices the pharmacy or chain pharmacy warehouse, or other person authorized by law to dispense or administer such drug to a patient, and the pharmacy or chain pharmacy warehouse or other authorized person receives delivery of the prescription drug directly from the manufacturer, or that manufacturer's third party logistics provider, or that manufacturer's exclusive distributor.

(6) "Facility" means a facility of a wholesale distributor where prescription drugs are stored, handled, repackaged or offered for sale.

(7) "Manufacturer" means a person licensed or approved by the federal food and drug administration to engage in the manufacture of drugs or

devices, consistent with the federal food and drug administration definition of "manufacturer" under its regulations and guidance implementing the prescription drug marketing act.

(8) "Manufacturer's exclusive distributor" means anyone who contracts with a manufacturer to provide or coordinate warehousing, distribution or other services on behalf of a manufacturer and who takes title to that manufacturer's prescription drug, but who does not have general responsibility to direct the sale or disposition of the manufacturer's prescription drug. Such manufacturer's exclusive distributor must be licensed as a wholesale distributor under section 54-1753, Idaho Code, and to be considered part of the normal distribution channel, must also be an authorized distributor of record.

(9) "Normal distribution channel" means a chain of custody for a prescription drug that goes from a manufacturer of the prescription drug, from that manufacturer to that manufacturer's colicensed partner, from that manufacturer to that manufacturer's third party logistics provider, from that manufacturer to that manufacturer's exclusive distributor, or from that manufacturer directly or through its colicensed partner, third party logistics provider or manufacturer's exclusive distributor to a repackager who is an authorized distributor of record for the manufacturer, whose facility is registered with the United States food and drug administration and who engages in the practice of repackaging the original dosage form of a prescription drug in accordance with applicable regulations and guidelines of the United States food and drug administration, either directly or by drop shipment, to:

- (a) A pharmacy to a patient;
- (b) Other designated persons authorized by law to dispense or administer such drug to a patient;
- (c) A wholesale distributor to a pharmacy to a patient or other designated persons authorized by law to dispense or administer such drug to a patient;
- (d) A wholesale distributor to a chain pharmacy warehouse to that chain pharmacy warehouse's intracompany pharmacy to a patient or other designated persons authorized by law to dispense or administer such drug to a patient; or
- (e) A chain pharmacy warehouse to the chain pharmacy warehouse's intracompany pharmacy to a patient or other designated persons authorized by law to dispense or administer such drug to a patient.

(10) "Pedigree" means a document or electronic file containing information that records each wholesale distribution of any given prescription drug.

(11) "Prescription drug" means any drug, including any biological product, except for blood and blood components intended for transfusion or biological products that are also medical devices, required by federal law or federal regulation to be dispensed only by a prescription, including finished dosage forms and bulk drug substances, subject to section 503(b) of the federal food, drug and cosmetic act.

(12) "Repackage" means repackaging or otherwise changing the container, wrapper or labeling to further the distribution of a prescription drug,

excluding that completed by the pharmacist responsible for dispensing product to the patient.

(13) "Repackager" means a person who repackages.

(14) "Third party logistics provider" means anyone who contracts with a prescription drug manufacturer to provide or coordinate warehousing, distribution or other services on behalf of a manufacturer, but does not take title to the prescription drug or have general responsibility to direct the prescription drug's sale or disposition. Such third party logistics provider must be licensed as a wholesale distributor under section 54-1753, Idaho Code, and to be considered part of the normal distribution channel, must also be an authorized distributor of record.

(15) "Veterinary pharmacy" means a business properly licensed as a pharmacy engaging exclusively in the preparation and dispensing of prescription drugs for veterinary prescribed use.

(16) "Wholesale distributor" means anyone engaged in the wholesale distribution of prescription drugs including, but not limited to:

- (a) Manufacturers;
- (b) Repackagers;
- (c) Own-label distributors;
- (d) Private-label distributors;
- (e) Jobbers;
- (f) Brokers;
- (g) Warehouses, including manufacturers' and distributors' warehouses;
- (h) Manufacturer's exclusive distributors;
- (i) Authorized distributors of record;
- (j) Drug wholesalers or distributors;
- (k) Independent wholesale drug traders;
- (l) Specialty wholesale distributors;
- (m) Third party logistics providers;
- (n) Retail pharmacies that conduct wholesale distribution; and
- (o) Chain pharmacy warehouses that conduct wholesale distribution.

To be considered part of the normal distribution channel, such wholesale distributor, except for a chain pharmacy warehouse not engaged in wholesale distribution, must also be an authorized distributor of record.

(17) "Wholesale distribution" means distribution of prescription drugs to persons other than a consumer or patient, but does not include:

- (a) Intracompany sales of prescription drugs, meaning any transaction or transfer between any division, subsidiary, parent or affiliated or related company under common ownership and control of a corporate entity, or any transaction or transfer between colicensees of a colicensed product.
- (b) The sale, purchase, distribution, trade or transfer of a prescription drug or offer to sell, purchase, distribute, trade or transfer a prescription drug for emergency medical reasons.
- (c) The distribution of prescription drug samples by manufacturers' representatives.
- (d) Drug returns, when conducted by a hospital, health care entity or charitable institution in accordance with 21 CFR 203.23.
- (e) Drug donations, when conducted in accordance with sections 54-1760 through 54-1765, Idaho Code.

- (f) The sale of minimal quantities of prescription drugs by pharmacies to licensed practitioners for office use.
- (g) The sale, purchase or trade of a drug, an offer to sell, purchase or trade a drug, or the dispensing of a drug pursuant to a prescription.
- (h) The sale, transfer, merger or consolidation of all or part of the business of a pharmacy or pharmacies from or with another pharmacy or pharmacies, whether accomplished as a purchase and sale of stock or business assets.
- (i) The sale, purchase, distribution, trade or transfer of a prescription drug from one (1) authorized distributor of record to one (1) additional authorized distributor of record when the manufacturer has stated in writing to the receiving authorized distributor of record that the manufacturer is unable to supply such prescription drug and the supplying authorized distributor of record states in writing that the prescription drug being supplied had, until that time, been exclusively in the normal distribution channel.
- (j) The delivery of, or offer to deliver, a prescription drug by a common carrier solely in the common carrier's usual course of business of transporting prescription drugs, and such common carrier does not store, warehouse or take legal ownership of the prescription drug.
- (k) The sale or transfer from a retail pharmacy or chain pharmacy warehouse of expired, damaged, returned or recalled prescription drugs to the original manufacturer or third party returns processor, including a reverse distributor.
- (l) The sale of a prescription drug by a veterinary pharmacy to the prescribing veterinarian in which:
 - (i) The prescribing veterinarian takes title but not physical possession of such prescription drug and invoices the owner or person having custody of the animal for whom the prescription drug is intended; and
 - (ii) Pursuant to a valid prescription drug order the veterinary pharmacy labels and delivers the prescription drug directly to the owner or person having custody of the animal for whom the prescription drug is intended.

History.

I.C., § 54-1752, as added by 2007, ch. 319, § 1, p. 949; am. 2009, ch. 105, § 1, p. 320; am.

2009, ch. 143, § 7, p. 428; am. 2011, ch. 144, § 1, p. 405; am. 2013, ch. 270, § 3, p. 698.

STATUTORY NOTES**Amendments.**

The 2013 amendment, by ch. 270, deleted "retail" preceding "pharmacies" in paragraph (17)(f).

The prescription drug marketing act, referred to in subsections (4) and (7), is Public Law 100-293, codified as 21 USCS §§ 331, 333, 351, 353, and 381.

For the regulations implementing the prescription drug marketing act, referred to in subsection (7), see 21 C.F.R. § 203.1. et seq.

Section 503(b) of the federal food, drug and cosmetic act, referred to in subsection (11), is codified as 21 U.S.C.S. § 353(c).

Federal References.

Section 1504 of the Internal Revenue Code, referred to in the introductory paragraph of subsection (2), is codified as 26 U.S.C.S. § 1504.

54-1761. Definitions. — As used in sections 54-1760 through 54-1765, Idaho Code:

(1) "Legend drug" has the same meaning as provided in section 54-1705(32[4])[35], Idaho Code.

(2) "Medically indigent" means any person who is in need of a legend drug and who is not eligible for medicaid or medicare, who cannot afford private prescription drug insurance or who does not have income and other resources available sufficient to pay for the legend drug.

(3) "Qualifying charitable clinic or center" means a community health center as defined in section 39-3203, Idaho Code, and means a free medical clinic as defined in section 39-7702, Idaho Code, acting in consultation with a pharmacist licensed in the state of Idaho.

History.

I.C., § 54-1761, as added by 2009, ch. 143, § 2, p. 428; am. 2010, ch. 79, § 19, p. 133; am. 2010, ch. 348, § 1, p. 909; am. 2011, ch. 135, § 5, p. 375; am. 2013, ch. 28, § 15, p. 52; am. 2013, ch. 270, § 5, p. 698.

STATUTORY NOTES

Amendments.

This section was amended by two 2013 acts which appear to be compatible and have been compiled together.

The 2013 amendment, by ch. 28, updated the reference in subsection (1) in light of the 2013 amendment of § 54-1705.

The 2013 amendment, by ch. 270, updated

the reference in subsection (1) in light of the 2013 amendment of § 54-1705.

Compiler's Notes.

The bracketed insertion in subsection (1) was added by the compiler to correct the statutory reference.

CHAPTER 18

PHYSICIANS AND SURGEONS

MEDICAL PRACTICE ACT

SECTION.

SECTION.

54-1806. Powers and duties.

54-1807A. Physician assistants — Supervis-

ing physicians — Physician assistant advisory committee.

54-1814. Grounds for medical discipline.

MEDICAL PRACTICE ACT

54-1806. Powers and duties. — The board shall have the authority to:

(1) Hire or appoint employees, including an executive director, investigators, attorneys, consultants and independent hearing examiners.

(2) Establish pursuant to the administrative procedure act rules for administration of this chapter, including rules governing all activities of persons employed as physician's assistants by persons licensed to practice medicine in this state. The board shall adopt rules pursuant to the administrative procedure act establishing procedures for the receipt of complaints and for the investigation and disposition thereof. Such rules shall provide for notice to a person when the board has authorized the committee to investigate that person and shall provide an opportunity for a person under investigation to meet with the committee or its staff before the initiation of formal disciplinary proceedings by the board.

(3) Conduct investigations and examinations and hold hearings as authorized by this section and by section 54-1806A, Idaho Code.

(4) The board shall have the power in any investigation or disciplinary proceeding pursuant to this chapter to administer oaths, take depositions of witnesses within or without the state in the manner consistent with rules adopted by the board pursuant to the administrative procedure act, and upon a determination that there is good cause the board shall have power throughout the state of Idaho to require the attendance of such witnesses and the production of such books, records, and papers as it may deem appropriate for any investigation, deposition or hearing. For that purpose the board may issue a subpoena for any witnesses or a subpoena duces tecum to compel the production of any books, records or papers, directed to the sheriff of any county of the state of Idaho, where such witness resides, or may be found, which shall be served and returned in the same manner as a subpoena in a criminal case is served and returned. The fees and mileage of the witnesses shall be the same as that allowed in the district courts in criminal cases, which fees and mileage shall be paid from any funds in the state treasury in the same manner as other expenses of the board are paid. In any case of disobedience to, or neglect of, any subpoena or subpoena duces tecum served upon any person, or the refusal of any witness to testify to any matter regarding which he may lawfully be interrogated, it shall be the duty of the district court of any county in this state in which such disobedience, neglect or refusal occurs, or any judge thereof, on application by the board to compel compliance with the subpoena by proceedings for contempt as in the case of disobedience of the requirements of a subpoena issued from such court or for refusal to testify therein. The licensed person accused in such formal contested case shall have the same right of subpoena upon making application to the board therefor.

(5) Seek injunctive relief prohibiting the unlawful practice of medicine.

(6) Make and enter into contracts.

(7) Operate, manage, superintend and control the licensure of physicians.

(8) Develop and submit a proposed budget setting forth the amount necessary to perform its functions.

(9) Perform such other duties as set forth in the laws of this state.

(10) Provide such other services and perform such other functions as are necessary to fulfill its responsibilities.

(11) Provide for reasonable fees through rules for administrative costs and assess costs reasonably and necessarily incurred in the enforcement of this chapter when a licensee has been found to be in violation of the provisions of this chapter.

(12) Prepare an annual report.

(13) Share with the department of labor personal identifying information of persons licensed under the provisions of this chapter necessary for the department of labor to identify workforce shortage areas in Idaho. The information provided to the department of labor concerning any person licensed under this chapter shall remain confidential and not subject to public disclosure, as required in section 9-340C, Idaho Code.

History.

I.C., § 54-1806, as added by 1977, ch. 199, am. 2010, ch. 88, § 1, p. 169; am. 2013, ch. § 7, p. 536; am. 2000, ch. 332, § 2, p. 1112; 115, § 1, p. 276.

STATUTORY NOTES**Amendments.**

The 2013 amendment, by ch. 115, inserted "the provisions of" near the end of subsection (11) and added subsection (13).

RESEARCH REFERENCES

A.L.R. — Pretrial discovery in disciplinary proceedings against physician. 65 A.L.R.6th 295.

54-1807A. Physician assistants — Supervising physicians — Physician assistant advisory committee. — (1) Physician assistants must be licensed by the board prior to the commencement of activities which may involve the practice of medicine in this state. The licensure requirements for physician assistants shall include passage of an examination acceptable to the board and submission of a completed application to the board on forms furnished by the board. All applicants for original licensure as a physician assistant shall submit to a fingerprint-based criminal history check of the Idaho central criminal database and the federal bureau of investigation criminal history database. Each applicant shall submit a full set of the applicant's fingerprints on forms supplied by the board which shall be forwarded by the board to the Idaho department of law enforcement and to the federal bureau of investigation identification division. The board shall determine and limit the scope of activities of each physician assistant on the basis of completed courses of study or programs of instruction received. Upon licensure, the board shall authorize each physician assistant to assist a physician or group of physicians who are qualified and approved by the board to supervise physician assistants to engage in activities as limited by the board. The board shall fix a license fee. All physician assistants shall renew their licenses annually.

(2) After a supervising physician or alternate supervising physician receives board approval to supervise a physician assistant, the physician may delegate medical services to the physician assistant as set forth in the delegation of services agreement on forms approved by and filed with the board. The physician assistant may perform delegated medical services in any setting authorized by the supervising physician or alternate supervising physician and the board, including clinics, hospitals, ambulatory surgical centers, patient homes, nursing homes and other health care institutions.

(3) The supervising physician and alternate supervising physician are responsible for all aspects of the performance of a physician assistant whether or not the supervising physician or alternate supervising physician actually pays the physician assistant a salary. The supervising physician and alternate supervising physician are responsible for supervising the physician assistant and ensuring that the medical services performed by the physician assistant are within the physician assistant's scope of training

and experience and have been properly delegated by the supervising physician or alternate supervising physician.

(4) Supervision by a supervising physician or alternate supervising physician shall be continuous but shall not be construed as necessarily requiring the constant physical presence of the supervising physician or alternate supervising physician at the time and place where medical services are performed by the physician assistant.

(5) A supervising physician or alternate supervising physician shall not delegate to a physician assistant the performance of any medical services for which the supervising physician or alternate supervising physician does not have training or experience and does not perform.

(6) A physician assistant or a group of physician assistants may independently own a medical practice in this state provided that the supervising physician, alternate supervising physician and each physician assistant comply with all requirements of this section and board rules. Each physician assistant must be licensed, registered or certified as a physician assistant in any state, territory or jurisdiction of the United States for at least two (2) years before the physician assistant may independently own a practice in this state.

(7) A physician assistant advisory committee is hereby established as follows:

(a) The physician assistant advisory committee shall consist of three (3) members appointed by the board. In making appointments to fill a vacancy created by the expiration of a term, the board shall give consideration to recommendations made by professional organizations of physician assistants and physicians. The board shall send notice to such professional organizations requesting recommendations. If recommendations from such professional organizations are not received by the board within sixty (60) days of notification, the board may appoint any qualified individual without consideration of any such recommendations. In the event of a vacancy in any unexpired term, the professional organizations may recommend, as soon as practical, at least two (2) and not more than three (3) persons to fill that vacancy. As soon as practical, the board shall appoint one (1) person to complete the unexpired term. If such professional organizations do not provide recommendations, the board shall appoint a person to complete the unexpired term without consideration of any such recommendations. The board may remove any committee member for misconduct, incompetency or neglect of duty after giving the member a written statement of the charges and an opportunity to be heard thereon. The executive director of the Idaho state board of medicine shall serve as the executive director to the physician assistant advisory committee.

(b) Each member of the physician assistant advisory committee shall be currently licensed as a physician assistant in Idaho and shall have actively practiced as a physician assistant in Idaho for three (3) years immediately preceding appointment. Members will serve a term of three (3) years and terms will be staggered. Members may serve two (2) successive terms. The committee shall elect a chairman from its member-

ship. The committee shall meet as often as necessary to fulfill its responsibilities. Members will be compensated according to section 59-509(n), Idaho Code.

(c) The physician assistant advisory committee shall not have authority to revoke licenses or impose limitations or conditions on licenses issued pursuant to this chapter. The committee has authority to make recommendations to the board. The board shall make all final decisions with respect thereto.

(d) The physician assistant advisory committee shall work in the following areas in conjunction with and make recommendations to the board and shall perform other duties and functions assigned to it by the board, including:

- (i) Evaluating the qualifications of applicants for licensure and registration;
- (ii) Performing investigations of misconduct and making recommendations regarding discipline;
- (iii) Maintaining a list of currently licensed physician assistants and graduate physician assistants in this state; and
- (iv) Advising the board on rule changes necessary to license and regulate physician assistants and graduate physician assistants in this state.

History.

I.C., § 54-1807A, as added by 2010, ch. 89, § 3, p. 170; am. 2013, ch. 47, § 1, p. 101.

STATUTORY NOTES

Amendments.

The 2013 amendment, by ch. 47, substituted "section 59-509(n)" for "section 59-5409(h)" near the end of paragraph (7)(b).

Compiler's Notes.

The Idaho central criminal history database, referred to in subsection (1), is the state's central repository of criminal history, maintained by the Idaho state police, bureau of criminal identification. See http://www.isp.state.id.us/identification/crime_history.

The federal bureau of investigation criminal history database, referred to in subsection (1), is the integrated automated fingerprint identification system (IAFIS), maintained by the criminal justice information services division of the federal bureau of investigation. See <http://www.fbi.gov/hq/cjis/iafis.htm>.

Effective Dates.

Section 2 of S.L. 2013, ch. 47 declared an emergency. Approved March 12, 2013.

54-1813. Temporary license and registration.

JUDICIAL DECISIONS

Immunity.

The plain, usual, and ordinary meaning of this section suggests that it provides immunity to any person for communications to the board of medicine made in connection with

physician performance. There is no requirement that the communication be authored by a physician. *Noak v. Idaho Dep't of Corr.*, 152 Idaho 305, 271 P.3d 703 (2012).

54-1814. Grounds for medical discipline. — Every person licensed to practice medicine, licensed to practice as a physician assistant or registered

as an extern, intern or resident in this state is subject to discipline by the board pursuant to the procedures set forth in this chapter and rules promulgated pursuant thereto upon any of the following grounds:

(1) Conviction of a felony, or a crime involving moral turpitude, or the entering of a plea of guilty or the finding of guilt by a jury or court of commission of a felony or a crime involving moral turpitude.

(2) Use of false, fraudulent or forged statements or documents, diplomas or credentials in connection with any licensing or other requirements of this act.

(3) Practicing medicine under a false or assumed name in this or any other state.

(4) Advertising the practice of medicine in any unethical or unprofessional manner.

(5) Knowingly aiding or abetting any person to practice medicine who is not authorized to practice medicine as provided in this chapter.

(6) Performing or procuring an unlawful abortion or aiding or abetting the performing or procuring of an unlawful abortion.

(7) The provision of health care which fails to meet the standard of health care provided by other qualified physicians in the same community or similar communities, taking into account his training, experience and the degree of expertise to which he holds himself out to the public.

(8) Division of fees or gifts or agreement to split or divide fees or gifts received for professional services with any person, institution or corporation in exchange for referral.

(9) Giving or receiving or aiding or abetting the giving or receiving of rebates, either directly or indirectly.

(10) Inability to obtain or renew a license to practice medicine, or revocation of, or suspension of a license to practice medicine by any other state, territory, district of the United States or Canada, unless it can be shown that such action was not related to the competence of the person to practice medicine or to any conduct designated herein.

(11) Prescribing or furnishing narcotic or hallucinogenic drugs to addicted persons to maintain their addictions and level of usage without attempting to treat the primary condition requiring the use of narcotics.

(12) Prescribing or furnishing narcotic, hypnotic, hallucinogenic, stimulating or dangerous drugs for other than treatment of any disease, injury or medical condition.

(13) Failure to safeguard the confidentiality of medical records or other medical information pertaining to identifiable patients, except as required or authorized by law.

(14) The direct promotion by a physician of the sale of drugs, devices, appliances or goods to a patient that are unnecessary and not medically indicated.

(15) Abandonment of a patient.

(16) Willfully and intentionally representing that a manifestly incurable disease or injury or other manifestly incurable condition can be permanently cured.

(17) Failure to supervise the activities of externs, interns, residents,

nurse practitioners, certified nurse-midwives, clinical nurse specialists, or physician assistants.

(18) Practicing medicine when a license pursuant to this chapter is suspended, revoked or inactive.

(19) Practicing medicine in violation of a voluntary restriction or terms of probation pursuant to this chapter.

(20) Refusing to divulge to the board upon demand the means, method, device or instrumentality used in the treatment of a disease, injury, ailment, or infirmity.

(21) Commission of any act constituting a felony or commission of any act constituting a crime involving moral turpitude.

(22) Engaging in any conduct which constitutes an abuse or exploitation of a patient arising out of the trust and confidence placed in the physician by the patient.

(23) Being convicted of or pleading guilty to driving under the influence of alcohol, drugs or other intoxicating substances or being convicted of or pleading guilty to other drug or alcohol related criminal charges.

(24) Failure to comply with a board order entered by the board.

History.

I.C., § 54-1814, as added by 1977, ch. 199, § 15, p. 435; am. 1998, ch. 177, § 5, p. 658; am. 2000, ch. 332, § 3, p. 1112; am. 2013, ch. 252, § 1, p. 622.
1992, ch. 73, § 1, p. 208; am. 1998, ch. 118,

STATUTORY NOTES

Amendments.

The 2013 amendment, by ch. 252, added to S.L. 1977, ch. 199, which is codified as §§ 54-1801 to 54-1806, 54-1807, 54-1808, and 54-1810 to 54-1814.
subsections (23) and (24).

Compiler's Notes.

The term "this act" in subsection (2) refers

RESEARCH REFERENCES

A.L.R. — Pretrial discovery in disciplinary proceedings against physician. 65 A.L.R.6th 295.

CHAPTER 19

PUBLIC WORKS CONTRACTORS

SECTION.

54-1908. Meetings — Quorum.

54-1908. Meetings — Quorum. — The board shall hold not less than four (4) regular meetings each year, on a day not later than the fifteenth day of the month in each of the months of January, April, July and October, for the purpose of transacting such business as may properly come before it. At the April meeting of each year the board shall elect officers. Special or regular monthly meetings of the board may be held at such times as the board may provide in the rules. Four (4) members of the board shall

constitute a quorum. Two (2) members of the board may call a special meeting at any time. Due notice of each meeting of the board and the time and place thereof shall be given each member in the manner prescribed in the rules. Each member of the board shall be compensated as provided by section 59-509(n), Idaho Code, and paid from the public works contractors license board fund.

History.

1941, ch. 115, § 8, p. 212; am. 1955, ch. 223, § 5, p. 480; am. 1969, ch. 18, § 2, p. 30; am. 1980, ch. 247, § 66, p. 582; am. 1987, ch. 55, § 1, p. 91; am. 1998, ch. 410, § 3, p. 1267; am. 1999, ch. 201, § 11, p. 529; am. 2012, ch. 36, § 2, p. 107; am. 2013, ch. 187, § 9, p. 447.

STATUTORY NOTES

Amendments.

The 2013 amendment, by ch. 187, substi-

tuted "fund" for "account" at the end of the section.

54-1926. Performance and payment bonds required of contractors for public buildings and public works of the state, political subdivisions and other public instrumentalities — Requirements for bonds — Governmental obligations.

JUDICIAL DECISIONS

Application.

The city was not required to pay a contractor the entirety of the contract price minus five percent of the cloth filters' value where the city's withholding was less than five per-

cent of the overall contract price and did not represent retainage for accepted work. *Peck Ormsby Constr. Co. v. City of Rigby*, — F. Supp. 2d —, 2012 U.S. Dist. LEXIS 157988 (D. Idaho Oct. 22, 2012).

CHAPTER 20

IDAHO REAL ESTATE LICENSE LAW

54-2002. Licensure required.

JUDICIAL DECISIONS

Sales Agents.

Although brokers are ultimately responsible for the contents of seller representation agreements, sales agents who enter into such

agreements on behalf of a broker are also accountable. *Maclay v. Idaho Real Estate Comm'n*, — Idaho —, — P.3d —, 2012 Ida. LEXIS 35 (Jan. 26, 2012).

54-2038. Designated broker — General responsibilities — Broker price opinions.

JUDICIAL DECISIONS

ANALYSIS

Broker activities.
Harm not required.
Sales agents.

Broker Activities.

Where defendant, without a broker's license, continued to carry on the business of real estate firm after the death of its owner/broker by entering into seller representation agreements, listing properties on the MLS for up-front marketing fees, showing the properties to prospective buyers, and attempting to sell properties for a separate broker's commission, defendant unlawfully carried on the business of the real estate firm and engaged in an unauthorized use of a broker's license. *Maclay v. Idaho Real Estate Comm'n*, — Idaho —, — P.3d —, 2012 Ida. LEXIS 35 (Jan. 26, 2012).

Harm Not Required.

None of the real estate licensing statutes

require harm to the public as an element of a violation: they simply provide that violators are subject to discipline. *Maclay v. Idaho Real Estate Comm'n*, — Idaho —, — P.3d —, 2012 Ida. LEXIS 35 (Jan. 26, 2012).

Sales Agents.

Although brokers are ultimately responsible for the contents of seller representation agreements, sales agents who enter into such agreements on behalf of a broker are also accountable. *Maclay v. Idaho Real Estate Comm'n*, — Idaho —, — P.3d —, 2012 Ida. LEXIS 35 (Jan. 26, 2012).

54-2040. Main office or business location.**JUDICIAL DECISIONS****Broker's License Required.**

Where defendant, without a broker's license, continued to carry on the business of real estate firm after the death of its owner/broker by entering into seller representation agreements, listing properties on the MLS for up-front marketing fees, showing the properties to prospective buyers, and attempting to

sell properties for a separate broker's commission, defendant unlawfully carried on the business of the real estate firm and engaged in an unauthorized use of a broker's license. *Maclay v. Idaho Real Estate Comm'n*, — Idaho —, — P.3d —, 2012 Ida. LEXIS 35 (Jan. 26, 2012).

54-2050. Brokerage representation agreements — Required elements.**JUDICIAL DECISIONS****Harm Not Required.**

None of the real estate licensing statutes require harm of the public as an element of a violation: they simply provide that violators

are subject to discipline. *Maclay v. Idaho Real Estate Comm'n*, — Idaho —, — P.3d —, 2012 Ida. LEXIS 35 (Jan. 26, 2012).

54-2053. Advertising.**JUDICIAL DECISIONS****Violations.**

Defendant violated subsection (1) when he used a new business name prior to approval by the commission, listed properties without listing a licensed broker's name, and misled

the public by including one real estate firm's listings on the website of a second firm. *Maclay v. Idaho Real Estate Comm'n*, — Idaho —, — P.3d —, 2012 Ida. LEXIS 35 (Jan. 26, 2012).

54-2054. Compensation, commissions and fees — Prohibited conduct.**JUDICIAL DECISIONS****Fees.**

Where defendant accepted compensation

for entering into seller representation agreements, advertising properties, listing proper-

ties, showing properties to prospective buyers, and placing signs on real property for flat fees, there is substantial evidence that he accepted fees not paid through a brokerage for

activities requiring a broker's license in violation of subsection (9). *Maclay v. Idaho Real Estate Comm'n*, — Idaho —, — P.3d —, 2012 Ida. LEXIS 35 (Jan. 26, 2012).

54-2057. Death or incapacity of a designated broker.

JUDICIAL DECISIONS

Unlawful Continuance.

Where defendant, without a broker's license, continued to carry on the business of real estate firm after the death of its owner/broker by entering into seller representation agreements, listing properties on the MLS for up-front marketing fees, showing the properties to prospective buyers, and attempting to

sell properties for a separate broker's commission, defendant unlawfully carried on the business of the real estate firm and engaged in an unauthorized use of a broker's license. *Maclay v. Idaho Real Estate Comm'n*, — Idaho —, — P.3d —, 2012 Ida. LEXIS 35 (Jan. 26, 2012).

54-2060. Grounds for disciplinary action.

JUDICIAL DECISIONS

ANALYSIS

Misconduct.

Unlicensed broker.

Misconduct.

Defendant's conduct with regard to his continued use of a real estate brokerage after its license was terminated and his continued use of that firm's website support the commission's finding that he acted dishonorably or dishonestly and engaged in continued or flagrant misrepresentation. *Maclay v. Idaho Real Estate Comm'n*, — Idaho —, — P.3d —, 2012 Ida. LEXIS 35 (Jan. 26, 2012).

Unlicensed Broker.

Broker's preparation of the seller representation agreements while unlicensed, creation of incomplete seller representation agreements, and listing of another agent's properties while unlicensed all established gross negligence or reckless conduct. *Maclay v. Idaho Real Estate Comm'n*, — Idaho —, — P.3d —, 2012 Ida. LEXIS 35 (Jan. 26, 2012).

CHAPTER 21

VETERINARIANS

SECTION.

54-2103. Definitions.

54-2103. Definitions. — As used in this chapter:

(1) "Accredited continuing education activity" means a provider and course, seminar, scientific program or any other activity approved by the board or its designees for continuing education credit.

(2) "Accredited or approved school of veterinary medicine" means any veterinary college or division of a university or college inside or outside the United States or Canada that offers the degree of doctor of veterinary medicine, veterinary medicine doctor, or its equivalent and is accredited or approved by the council on education of the American veterinary medical association or other accrediting agency or association approved by the board.

(3) "Allied health professional" means a person holding a current active

license, in good standing, in any state to practice one (1) of the healing arts including, but not limited to, medicine, dentistry, osteopathy, chiropractic, acupuncture and podiatry.

(4) "Anesthetized" means any condition of general anesthesia, caused by the administration of a drug or combination of drugs in sufficient quantity to produce a state of unconsciousness or disassociation and blocked response to a given pain or alarm stimulus.

(5) "Animal" means any animal other than man and includes fowl, birds, fish and reptiles, wild or domestic, living or dead.

(6) "Assistant" means any individual, other than a certified veterinary technician or a licensed veterinarian, who is utilized by a licensed veterinarian to assist in the performance of acts pertaining to the practice of veterinary medicine.

(7) "Board" means the state board of veterinary medicine.

(8) "Certified euthanasia agency" or "CEA" means a law enforcement agency, an animal control agency or a society for the prevention of cruelty to animals, which has been inspected and certified by the euthanasia task force or the board.

(9) "Certified euthanasia technician" or "CET" means a person employed by a certified euthanasia agency[,] who is instructed and certified by the euthanasia task force or the board as defined in the rules of the board, but not to include an individual employed as a technician by animal research laboratories.

(10) "Certified veterinary technician" means a person who has fulfilled the certification requirements prescribed by board rule and has been certified by the board to practice veterinary technology in this state.

(11) "Consultation" means a deliberation between two (2) or more veterinarians concerning the diagnosis of a disease or the proper management of the case.

(12) "Credit hour" means fifty (50) minutes of participation in an accredited continuing education activity.

(13) "Dentistry" is the practice of veterinary medicine and means the application or use of any instrument or device to any portion of an animal's tooth, gum or any related tissue for the prevention, cure or relief of any wound, fracture, injury, disease or other condition of an animal's tooth, gum or related tissue. Dentistry includes, but is not limited to:

(a) "Preventive dental procedures" including, but not limited to, the removal of calculus, soft deposits, plaque, stains, and floating to shape the teeth above the gum line or the smoothing, filing or polishing of tooth surfaces above the gum line; and

(b) "Operative dentistry/oral surgery" or any other dental procedure that invades the hard or soft oral tissue including a procedure that alters the structure of one (1) or more teeth, or repairs damaged and diseased teeth, or the deliberate extraction of one (1) or more teeth.

(14) "Direct supervision" means the supervising veterinarian is on the premises where the animal is being treated, is quickly and easily available and the animal has been examined by the supervising veterinarian as acceptable veterinary medical practice requires.

(15) "Discipline" means board action including, but not limited to:

- (a) Refusing to issue, renew or reinstate a license, permit or certification to practice as a licensed veterinarian, a certified veterinary technician, a certified euthanasia agency or a certified euthanasia technician;
- (b) Denial, revocation, suspension, sanction, probation or voluntary surrender of a license, permit or certification to practice as a licensed veterinarian, a certified veterinary technician, a certified euthanasia agency or a certified euthanasia technician;
- (c) The ability to enter into consent agreements and negotiated settlements with licensed veterinarians, certified veterinary technicians, certified euthanasia agencies and certified euthanasia technicians;
- (d) The ability to bring an administrative or civil action against any person in or outside of this state who practices veterinary medicine, veterinary technology or who performs euthanasia within this state.

(16) "Emergency" means that the animal has been placed in a life-threatening condition where immediate treatment is necessary to sustain life.

(17) "Emergency veterinary facility" means any facility with the primary function of receiving, treating, and monitoring emergency patients during its specified hours of operation or that displays to the public any sign, card, or advertisement that indicates it is an emergency veterinary clinic or hospital. An emergency veterinary facility may be an independent after-hours service, an independent twenty-four (24) hour service, or it may be part of a full-service veterinary medical facility.

(18) "Euthanasia task force" means a task force established by the board for the purposes of training, examining, certifying and inspecting certified euthanasia agencies and certified euthanasia technicians.

(19) "Extra label use" means the actual or intended use of a human or veterinary drug in an animal in a manner that is not in accordance with the drug's labeling.

(20) "Floating" means shaping the posterior (cheek) teeth and the incisors (cutting teeth) in horses, mules and donkeys through the use of hand floats, rasps, burs, mechanical files or other file-like instruments to restore balance, allow more efficient mastication, and reduce pain and trauma to the periodontal tissues.

(21) "Herd, litter or flock" of animals means animals managed as a group for purposes including, but not limited to, breeding, sale, show or food production.

(22) "Immediate supervision" means the supervising veterinarian is in the immediate area, in audible and visual range of the animal patient and the person treating the patient and the animal has been examined by the supervising veterinarian as acceptable veterinary medical practice requires.

(23) "In good standing" means, when used in reference to an applicant for licensure or certification, that an applicant:

- (a) Has not been the recipient of any administrative penalties regarding his practice of veterinary medicine including, but not limited to, fines, formal reprimands, license suspensions or revocations (except for license revocations for nonpayment of license renewal fees) or probationary

limitations, or has not entered into any consent agreement or negotiated settlement that contains conditions placed by a board on his professional conduct and practice, including any voluntary surrender of a license; and

(b) Has never had his United States drug enforcement administration privileges restricted or revoked; and

(c) Is not currently under investigation by another veterinary licensing authority for acts which would provide a basis for disciplinary action in this state, as determined by the board; and

(d) Has no physical or mental impairment related to drugs, alcohol, or a finding of mental incompetence by a physician that would limit the applicant's ability to undertake the practice of veterinary medicine in a manner consistent with the safety of a patient or the public; and

(e) Has not been convicted of a felony as defined in chapter 1, title 18, Idaho Code; and

(f) Has no criminal conviction record or pending criminal charge relating to an offense the circumstances of which substantially relate to the practice of veterinary medicine. Applicants who have criminal conviction records or pending criminal charges shall require appropriate authorities to provide information about the record or charge directly to the board in sufficient detail to enable the board to make a determination whether the record or charge is substantially related to the practice of veterinary medicine.

(24) "Indirect supervision" means the supervising veterinarian is not on the premises but is available for immediate contact by telephone, radio or other means, has given either written or oral instructions for treatment of the animal patient, the animal has been examined by the supervising veterinarian as acceptable veterinary medical practice requires, and the animal, if previously anesthetized, has recovered to the point of being conscious and sternal.

(25) "Legend/Prescription drug" means any drug which, under federal law, regulation or rule, is required, prior to being distributed or delivered, to be labeled with one (1) of the following statements: "Caution: Federal law restricts this drug to be used by or on the order of a licensed veterinarian," or "Caution: Federal law prohibits dispensing without a prescription," or "RX Only," or a drug which is required by any applicable state or federal law, rule or regulation to be distributed or dispensed pursuant to a prescription only, or is restricted to use by licensed practitioners only.

(26) "Licensed veterinarian" means a person who is validly and currently licensed to practice veterinary medicine in this state.

(27) "Malpractice" means, but is not limited to:

(a) Treatment in a manner contrary to accepted veterinary practices and with injurious results; or

(b) Any professional misconduct or unreasonable lack of professional skill or fidelity in the performance of the professional practice of veterinary medicine; or

(c) Failure to provide adequate supervision, except in an emergency situation; or

(d) Allowing an unqualified individual to perform a procedure that is part of the practice of veterinary medicine; or

(e) The negligent practice of veterinary medicine, as determined by the standard of practice for the area, that results in injury, unnecessary suffering or death.

(28) "Medical incompetence" means lacking in sufficient medical knowledge or skills or both to a degree likely to endanger the health of patients.

(29) "Mobile clinic" means a vehicle including, but not limited to, a camper, motor home, trailer or mobile home, used as a veterinary medical facility. A mobile clinic is not required for house calls or farm calls.

(30) "On-call emergency service" means a veterinary medical facility that is available to provide emergency veterinary services as requested if a veterinarian is available.

(31) "Owner/Ownership" means ownership as defined by the laws of property and ownership, chapter 1, title 55, Idaho Code, and chapter 1, title 73, Idaho Code.

(32) "Person" means any individual, firm, partnership, association, joint venture, cooperative and corporation, or any other group or combination acting in concert; and whether or not acting as principal, trustee, fiduciary, receiver, or as any other kind of legal or personal representative, or as the successor in interest, assignee, agent, factor, servant, employee, director, officer, or any other representative of such person.

(33) "Physical or mental incompetence" means the veterinarian's ability to practice veterinary medicine with reasonable skill and safety is impaired by reason of illness, excessive use of alcohol, drugs, narcotics, chemicals or any other substance, or as a result of any mental or physical disability.

(34) "Practice of veterinary medicine" in this state, through telephonic, electronic or other means, regardless of the location of the veterinarian, includes veterinary surgery, obstetrics, dentistry, and all other branches or specialties of veterinary medicine and means:

(a) To directly or indirectly diagnose, treat, correct, change, relieve or prevent animal disease, deformity, defect, injury or other physical or mental conditions; including the prescribing, dispensing, delivering or administering of any drug, medicine, biologic, apparatus application, anesthetic or other therapeutic or diagnostic substance or technique, or the use of any obstetrical procedure or any manual or mechanical procedure for artificial insemination, for testing or examining for pregnancy, fertility evaluation, embryo transplant, grading of fresh semen, or to render advice or recommendation with regard to any of the above.

(b) To represent, directly or indirectly, publicly or privately, an ability and willingness to do any act described in subsection (34)(a) of this section.

(c) To use any title, words, abbreviations or letter in a manner or under circumstances which induce the belief that the person using them is qualified to do any act described in subsection (34)(a) of this section, except where such person is a licensed veterinarian.

(35) "Professional supervision" means the supervising veterinarian is in daily contact by telephone, radio or other means with the temporary licensee.

(36) "Referral" means the transfer of responsibility for diagnosis and treatment from the referring veterinarian to the receiving veterinarian, or

from the referring veterinarian to the board-certified specialist, or from the referring veterinarian to an allied health professional.

(37) "Regular employee" means a person who performs services for the animal's owner other than, or in addition to, feeding, boarding, castrating and dehorning, but does not include independent contractors or agents.

(38) "Supervision" means the action or process of a supervising veterinarian in directing activities or a course of action for those individuals to whom activities or functions have been assigned or delegated.

(39) "Supervising veterinarian" means a licensed veterinarian utilizing the services of a temporary licensee, certified veterinary technician, veterinary technician, veterinary technician with a temporary certification, veterinary assistant, certified euthanasia technician, or as provided by rule. A supervising veterinarian shall be individually responsible and liable, regardless of the supervision provided, for all damages arising out of his own acts or omissions and for the performance of any acts and omissions pertaining to the practice of veterinary medicine that are delegated to the temporary licensee, certified veterinary technician, veterinary technician, veterinary assistant or certified euthanasia technician. Nothing herein shall be construed to deprive the board of its disciplinary authority with respect to the temporary licensees, certified veterinary technicians, veterinary technicians, veterinary assistants or certified euthanasia technicians.

(40) "Unethical or unprofessional conduct" means to knowingly engage in conduct of a character likely to deceive or defraud the public, false or misleading advertising or solicitation, obtaining any fee or compensation by fraud or misrepresentation, sharing office space and working in conjunction with any person illegally practicing veterinary medicine, employing either indirectly or directly an unlicensed or uncertified person to perform acts pertaining to the practice of veterinary medicine, except as provided by law or rule, or the violation of any law or rules adopted by the board pertaining to unethical or unprofessional conduct, or that provide a code of professional conduct to be followed and carried out by persons licensed or certified by the board.

(41) "Unlicensed practice" means:

- (a) The practice of veterinary medicine in this state, through telephonic, electronic or other means, regardless of the location of the veterinarian, without a valid, unexpired, unrevoked, and unsuspended active license or certification in this state to do so, except as provided by law or rule; or
- (b) Representing one's self through offerings, advertisements or use of professional titles or designations as being qualified to practice veterinary medicine.

(42) "Veterinarian" means a person who has received a doctor's degree in veterinary medicine from an accredited or approved school of veterinary medicine or as otherwise provided by law or rule.

(43) "Veterinarian on call" means a veterinarian is not present at the veterinary medical facility, but is able to respond within a reasonable time to requests for emergency veterinary services.

(44) "Veterinarian on premises" means a veterinarian is present at the veterinary medical facility and is prepared and qualified to render veterinary services.

(45) "Veterinary medical facility" means any premises, office, unit, structure, mobile unit, or area utilized for the practice of veterinary medicine other than the premises of an owner when used for treatment of the owner's animal.

(46) "Veterinary technician" means a person who has graduated from a veterinary technology program accredited or approved by the committee on veterinary technician education and activities of the American veterinary medical association, or other accrediting agency approved by the board, or a person who has received equivalent training as set forth in the rules of the board.

(47) "Veterinary technology" means the performance of services within the practice of veterinary medicine by a person working under the direction of a supervising veterinarian to perform duties that require an understanding of veterinary medicine in order to carry out the orders of the veterinarian. Veterinary technology does not include prognosis, diagnosis, operative dentistry, deliberate tooth extraction procedures or the prescribing of treatment or performing surgery of any kind.

History.

1971, ch. 173, § 3, p. 812; am. 1983, ch. 139, § 3, p. 336; am. 1990, ch. 111, § 2, p. 222; am. 1991, ch. 138, § 1, p. 325; am. 1995, ch. 62, § 1, p. 145; am. 2000, ch. 122, § 1, p. 269; am.

2001, ch. 149, § 1, p. 525; am. 2006, ch. 139, § 1, p. 395; am. 2007, ch. 54, § 1, p. 126; am. 2009, ch. 82, § 1, p. 229; am. 2010, ch. 105, § 1, p. 207; am. 2013, ch. 79, § 1, p. 194; am. 2013, ch. 290, § 1, p. 762.

STATUTORY NOTES

Amendments.

This section was amended by two 2013 acts which appear to be compatible and have been compiled together.

The 2013 amendment, by ch. 79, deleted former subsection (9)(b) which read "Any person who is trained prior to December 31, 1992, in euthanasia methods, in a course approved by the board, may be certified upon presentation of evidence of such training to either the euthanasia task force or the board" and substituted "committee on veterinary technician education and activities" for "council on education" in subsection (46).

The 2013 amendment, by ch. 290, substi-

tuted "prescribing, dispensing, delivering or administering" for "prescription or administration" in paragraph (34)(a).

Compiler's Notes.

For more on the committee on veterinary technician education and activities of the American veterinary medical association, see <https://www.avma.org/About/Governance/Councils/Pages/Committee-on-Veterinary-Technician-Education-and-Activities-Entity-Description.aspx>.

The bracketed insertion in subsection (9) is a result of the reconciliation of the multiple 2013 amendments of this section.

CHAPTER 23

PSYCHOLOGISTS

SECTION.

54-2305. Board of psychologist examiners — Powers.

54-2305. Board of psychologist examiners — Powers. — The board of psychologist examiners shall have the following powers:

(1) To pass upon the qualifications and fitness of applicants for licenses and reciprocal licenses; and, at its option to adopt and revise rules requiring

applicants to pass examinations relating to their qualifications as a prerequisite to the issuance of licenses.

(2) To adopt, and, from time to time, revise such rules in accordance with the provisions of chapter 52, title 67, Idaho Code, and not inconsistent with the law as may be necessary to carry into effect the provisions of this chapter. Such rules shall include, but need not be limited to, a code of ethics for psychologists in the state consistent with the current, and as future amended, ethical standards for psychologists of the American psychological association and the educational and professional qualifications of applicants for licensing under this chapter.

(3) To examine for, deny, approve, issue, revoke, suspend and renew the licenses of psychologists and psychologist applicants pursuant to this chapter, and to conduct hearings in connection therewith.

(4) To conduct hearings upon complaints concerning violations of the provisions of, and the rules adopted pursuant to, this chapter and cause the prosecution and enjoinder of all such violations.

(5) The board, or its duly appointed hearing officer, shall have the power in any disciplinary proceeding under this chapter, to administer oaths, take depositions of witnesses within or without the state in the manner provided by law in civil cases, and may apply to any district court of this state for a subpoena to require the attendance of such witnesses and the production of such books, records, and papers as it deems necessary. The fees and mileage of the witnesses shall be the same as that allowed in district courts in criminal cases, which fees and mileage shall be paid in the same manner as other expenses of the board are paid. In any case of disobedience to, or neglect of, any subpoena or subpoena duces tecum served upon any person, or the refusal of any witness to testify to any matter regarding which he may be lawfully interrogated. It shall be the duty of any district court in this state, on application by the board, to compel compliance with the subpoena by proceedings for contempt, as in the case of disobedience of the requirements of the subpoena issued from such court for refusal to testify therein. The licensed person accused in such proceedings shall have the same right of subpoena.

(6) Proceedings before the board and judicial review of the action of the board shall be governed by the provisions of chapter 52, title 67, Idaho Code.

(7) To authorize, by written agreement, the bureau of occupational licenses as agent to act in its interest.

(8) To adopt a rule requiring continuing education as a condition of continued licensure.

(9) To adopt rules allowing for a temporary permit to individuals licensed as psychologists in another state authorizing such individuals to practice psychology in Idaho for a period not to exceed thirty (30) days pursuant to such terms and requirements as set forth in the rules.

(10) To establish by rule an inactive license status.

(11) To establish by rule the standards and requirements for the use of communication technology in the practice of psychology, including supervision.

History.

1963, ch. 186, § 5, p. 549; am. 1974, ch. 13, § 160, p. 138; am. 1984, ch. 141, § 2, p. 330; am. 1987, ch. 147, § 2, p. 292; am. 1993, ch. 216, § 80, p. 587; am. 2009, ch. 33, § 4, p. 90; am. 2013, ch. 13, § 1, p. 23.

STATUTORY NOTES**Amendments.**

The 2013 amendment, by ch. 13, added subsection (11).

CHAPTER 24**DRINKING WATER AND WASTEWATER
PROFESSIONALS LICENSING ACT****SECTION.**

54-2407. Fees — Payment of costs and expenses.

54-2407. Fees — Payment of costs and expenses. — (1) The bureau of occupational licenses shall collect a fee not to exceed one hundred dollars (\$100) for each application, each administration of an examination, each original license, and each annual renewal of any license issued pursuant to this chapter, and shall deposit all fees in the state treasury in accordance with section 67-2605, Idaho Code. The actual fees shall be set by board rule. The bureau shall also collect a fee not greater than that charged by the examination provider when an examination is required as a condition of licensure. All required fees shall not be prorated and are nonrefundable.

(2) All fees received under the provisions of this chapter shall be paid to the bureau of occupational licenses and deposited in the state treasury to the credit of the occupational licenses fund [account] and all costs and expenses incurred under the provisions of this chapter shall be charged against and paid from said fund [account].

History.

I.C., § 54-2407, as added by 2004, ch. 335, § 1, p. 995; am. 2013, ch. 180, § 1, p. 417.

STATUTORY NOTES**Amendments.**

The 2013 amendment, by ch. 180, substituted “not greater than” for “equal to” in the next-to-last sentence in subsection (1).

were added by the compiler to correct the name of the referenced account. See § 67-2605.

Effective Dates.

Section 2 of S.L. 2013, ch. 180 declared an emergency. Approved March 29, 2013.

Compiler's Notes.

The bracketed insertions in subsection (2)

CHAPTER 25

HORSE RACING

SECTION.

54-2502. Definitions.

54-2505. Commission's annual report — Public record.

54-2512A. Pari-mutuel betting on historical

horse races — Distributions of deposits — Historical horse race purse moneys fund.

54-2502. Definitions. — Unless the context otherwise requires, words and phrases as used herein shall mean:

(1) "Commission" means the Idaho state racing commission, hereinafter created.

(2) "Gross daily receipts" means the total of all sums deposited in all pools for each race day.

(3) "Historical horse race" means a race involving live horses that was conducted in the past and that is rebroadcast by electronic means and shown on a delayed or replayed basis for the purposes of wagering conducted at a facility that is authorized to show simulcast and/or televised races.

(4) "Horsemen's group" means an organization composed of licensed owners and/or trainers duly registered with the secretary of state and recognized by the Idaho [state] racing commission.

(5) "Host facility" means the racetrack at which the race is run, or the facility which is designated as the host facility if the race is run in a jurisdiction which is not participating in the interstate combined wagering pool.

(6) "Host jurisdiction" means the jurisdiction in which the host facility is located.

(7) "Interstate common wagering pool" means a pari-mutuel pool established in one (1) jurisdiction which is combined with comparable pari-mutuel pools from one (1) or more racing jurisdictions. Such pool is established for the purpose of establishing pay-off prices in the various jurisdictions.

(8) "Pari-mutuel" means any system whereby wagers with respect to the outcome of a race are placed with, or in, a wagering pool conducted by a person licensed or otherwise permitted to do so under state law, and in which the participants are wagering with each other and not against the operator.

(9) "Persons" means and includes individuals, firms, corporations and associations.

(10) "Pool" means the total sum of all moneys wagered in each race for each type of bet. Types of bets include win, place, show, quinella, daily double, exacta, trifecta, etc., and such other types as are approved by the commission from time to time.

(11) "Race meet" means and includes any exhibition of thoroughbred, purebred, and/or registered horse racing, mule racing or dog racing, where the pari-mutuel system of wagering is used. Singular includes the plural and plural includes the singular; and words importing one gender shall be regarded as including all other genders.

(12) "Racing jurisdiction" or "jurisdiction" means a governmental jurisdiction responsible for the regulation of pari-mutuel racing in that jurisdiction.

(13) "Simulcast" means the telecast or other transmission of live audio and visual signals of a race, transmitted from a sending track to a receiving location, for the purpose of wagering conducted on the race at the receiving location.

History.

1963, ch. 64, § 2, p. 246; am. 1969, ch. 221, § 1, p. 724; am. 1984, ch. 83, § 1, p. 158; am. 1985, ch. 194, § 1, p. 494; am. 1987, ch. 316, § 2, p. 660; am. 1988, ch. 141, § 1, p. 256; am.

1991, ch. 56, § 1, p. 106; am. 1992, ch. 19, § 1, p. 55; am. 1996, ch. 380, § 1, p. 1287; am. 1998, ch. 97, § 1, p. 345; am. 2006, ch. 147, § 1, p. 461; am. 2013, ch. 139, § 1, p. 333.

STATUTORY NOTES

Amendments.

The 2013 amendment, by ch. 139, added the definition for "historical horse race" and redesignated the following subsections accordingly.

Compiler's Notes.

The bracketed insertion in subsection (4) was added by the compiler to correct the name of the referenced agency.

54-2505. Commission's annual report — Public record. — The commission shall keep detailed records of all meetings and of the business transacted therein, and all licenses applied for and issued, reports of which shall be embodied in an annual report which the commission shall prepare and submit to the governor on or before the thirty-first day of March of each year. Said annual report shall cover the activities of the commission, including the financial report of the commission and a financial summary of licensees subject to section 54-2508, Idaho Code, and organizations of licensees defined in section 54-2502(4), Idaho Code, for the preceding year in addition to the aforementioned.

All records of the commission shall be public records, and as such, subject to public inspection.

History.

1963, ch. 64, § 5, p. 246; am. 1969, ch. 221,

§ 1, p. 724; am. 2005, ch. 264, § 1, p. 809; am.

2013, ch. 139, § 2, p. 333.

STATUTORY NOTES

Amendments.

The 2013 amendment, by ch. 139, updated

a statutory reference in the first paragraph in light of the 2013 amendment of § 54-2502.

54-2512A. Pari-mutuel betting on historical horse races — Distributions of deposits — Historical horse race purse moneys fund. —

(1) Wagering on an historical horse race is declared to be lawful and within the scope of a license that authorizes a live race meet licensee to conduct and supervise the use of the pari-mutuel wagering on simulcast and/or televised races. Wagering on an historical horse race shall be conducted in accordance with the pari-mutuel system pursuant to the provisions of this chapter and in accordance with all rules promulgated by the commission. Wagering on

an historical horse race may be conducted at any facility authorized to conduct and supervise wagering on simulcast and/or televised races.

(2) Each licensee conducting the pari-mutuel system for historical horse races shall distribute and pay all sums deposited in any historical horse race pool as follows:

(a) No less than eighty-nine percent (89%) of gross daily receipts in various wagering pools established to fund reserves and payoffs for distribution and payment to winning wagers;

(b) One and one-half percent (1.50%) of gross daily receipts to the Idaho state racing commission for distribution and deposit as follows in the following designated accounts:

(i) One-half of one percent (0.50%) of gross daily receipts to the racing commission account within the state regulatory fund;

(ii) One-fifth of one percent (0.20%) of gross daily receipts to the track distribution account within the pari-mutuel distribution fund;

(iii) One-fifth of one percent (0.20%) of gross daily receipts to the breed distribution account within the pari-mutuel distribution fund;

(iv) One-half of one percent (0.50%) of gross daily receipts to the public school income fund; and

(v) One-tenth of one percent (0.10%) of gross daily receipts to the Idaho horse council youth programs account which is hereby created within the pari-mutuel distribution fund; and

(c) The balance of gross daily receipts to the licensee. All moneys in these accounts are hereby continuously appropriated to the commission for further distribution and time of payment as provided in section 54-2513, Idaho Code.

(3) Each licensee conducting the pari-mutuel system for historical horse races shall enter into an agreement with a horsemen's group, as the term "horsemen's group" is defined in section 54-2502, Idaho Code, that shall address, but not be limited to, establishing the percentage of the historical horse race handle that is dedicated to the live horse race purse structure. In addition, the agreement shall provide that all historical race purse moneys that are accrued as required by horsemen's agreements shall be held in the historical horse race moneys fund created pursuant to the provisions of this section.

(4) The historical horse race purse moneys fund is hereby created in the state treasury. Moneys in the fund shall consist of all historical horse race moneys that are accrued as required by horsemen's agreements. Moneys in the fund are hereby perpetually appropriated to the Idaho state racing commission for distribution pursuant to the provisions of horsemen's agreements and rules of the commission. The commission is authorized to promulgate rules providing for the receipt, deposit, withdrawal and distribution of such moneys. The state treasurer shall invest idle moneys in the fund and any interest received on those investments shall be returned to the fund which is created pursuant to the provisions of this section.

(5) The commission may promulgate rules pursuant to chapter 52, title 67, Idaho Code, to implement the provisions of this section.

History.

I.C., § 54-2512A, as added by 2013, ch. 139,
§ 3, p. 333.

STATUTORY NOTES**Cross References.**

Breed distribution account, § 54-2513.
Pari-mutuel distribution fund, § 54-2513.
Public school income fund, § 33-903.

Racing commission account, § 54-2513.

State treasurer, § 67-1201 et seq.

Track distribution account, § 54-2513.

CHAPTER 27**SCRAP DEALERS****SECTION.**

54-2701. Definitions.

54-2702. Records required for purchasing
nonferrous or stainless steel

SECTION.

metal property from the gen-
eral public.

54-2707. Unlawful violations and liability.

54-2701. Definitions. — The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) “Commercial account” means a relationship between a scrap metal business and a commercial enterprise that is ongoing and properly documented under this chapter.

(2) “Commercial enterprise” means a corporation, partnership, limited liability company, association, state agency, political subdivision of the state, public corporation, or any other legal or commercial entity.

(3) “Commercial metal property” means: Utility access covers; street light poles and fixtures; road and bridge guardrails; highway or street signs; water meter covers; traffic directional and control signs; traffic light signals; any metal property marked with the name of a commercial enterprise, including, but not limited to, a telephone, cable, electric, water, natural gas, or other utility, or railroad; building construction materials consisting of copper pipe, tubing, or wiring, or aluminum wire, siding, downspouts, or gutters; aluminum or stainless steel fence panels; aluminum decking, bleachers, or risers; historical markers; statue plaques; grave markers and funeral vases; or agricultural irrigation wheels, sprinkler heads, and pipes; or stainless steel designed to be used in agricultural or commercial businesses.

(4) “Nonferrous metal property” means metal property for which the value of the metal property is derived from the property’s content of copper, brass, aluminum, bronze, lead, zinc, nickel, gold, silver, platinum and their alloys, but shall not include aluminum beverage containers, used beverage containers or similar beverage containers; however, the term includes stainless steel beer kegs.

(5) “Record” means a paper, electronic, or other method of storing information.

(6) “Scrap metal business” means a scrap metal supplier, scrap metal recycling center, and scrap metal processor.

(7) “Scrap metal processor” means a person with a current business license that conducts business from a permanent location, that is engaged in

the business of purchasing or receiving metal property for the purpose of altering the metal in preparation for its use as feedstock in the manufacture of new products, and that maintains a hydraulic bailer, shearing device, or shredding device for recycling.

(8) "Scrap metal recycling center" means a person with a current business license that is engaged in the business of purchasing or receiving nonferrous metal property for the purpose of aggregation and sale to another scrap metal business and that maintains a fixed place of business within the state.

(9) "Scrap metal supplier" means a person that is engaged in the business of purchasing or receiving nonferrous metal property for the purpose of aggregation and sale to a scrap metal recycling center or scrap metal processor and that does not maintain a fixed business location in the state.

(10) "Transaction" means a pledge, or the purchase of, or the trade of any item of nonferrous metal property by a scrap metal business from a member of the general public. "Transaction" does not include donations or the purchase or receipt of nonferrous metal property by a scrap metal business from a commercial enterprise, from another scrap metal business, or from a duly authorized employee or agent of the commercial enterprise or scrap metal business.

History.

I.C., § 54-2701, as added by 2009, ch. 152, § 2, p. 441; am. 2013, ch. 286, § 1, p. 738.

STATUTORY NOTES

Amendments.

The 2013 amendment, by ch. 286, added "but shall not include aluminum beverage containers, used beverage containers or sim-

ilar beverage container; however, the term includes stainless steel beer kegs" at the end of subsection (4).

54-2702. Records required for purchasing nonferrous or stainless steel metal property from the general public. — (1) At the time of a transaction, every scrap metal business doing business in this state shall produce, wherever that business is conducted, an accurate and legible record of each transaction involving nonferrous metal property or stainless steel metal property and the photographs required in subsection (3) of this section. This record must be written in the English language, documented on a standardized form or in electronic form, and contain the following information:

- (a) The signature of the person with whom the transaction is made;
- (b) The date, location and value of the transaction;
- (c) The name of the employee representing the scrap metal business in the transaction;
- (d) The name and street address of the person with whom the transaction is made;
- (e) A photocopy or digital image of a current driver's license that is valid to operate a motor vehicle in the state of Idaho or a United States or Idaho government-issued picture identification of the seller; and

(f) The license plate number of any vehicle required to have such a plate, if any, used by the person with whom the transaction is made.

(2) For every transaction that involves nonferrous or stainless steel metal property, every scrap metal business doing business in the state shall require the person with whom a transaction is being made to sign a declaration.

The declaration may be included as part of the transactional record required under subsection (1) of this section, or on a receipt for the transaction. The declaration must state substantially the following: "I, the undersigned, affirm under penalty of law that the property that is subject to this transaction is not to the best of my knowledge stolen property."

The declaration must be signed and dated and the time of day noted by the person with whom the transaction is being made. An employee of the scrap metal business must witness the signing and dating of the declaration and sign the declaration accordingly before any transaction may be consummated.

(3) For every transaction that involves nonferrous or stainless steel metal property purchased from the general public, every scrap metal business doing business in the state shall create a photographic or digital image of the following, or may create a digital video record of no less than thirty (30) seconds in total length of the following:

- (a) Each of the individuals with whom the transaction is being made, to include the face, head and shoulders;
- (b) The vehicle used by the person(s) with whom the transaction is being made with the property involved in the transaction clearly visible;
- (c) The vehicle used by the person(s) with whom the transaction is being made with the license plate number clearly visible;
- (d) The property involved in the transaction that allows for the property to be identified; and
- (e) The provisions of this subsection shall not apply upon and after the fourth purchase from the same member of the general public to the same scrap metal business within one (1) year.

History.

I.C., § 54-2702, as added by 2009, ch. 152, § 2, p. 441; am. 2013, ch. 286, § 2, p. 738.

STATUTORY NOTES

Amendments.

The 2013 amendment, by ch. 286, added "and the photographs required in subsection (3) of this section" to the end of the first sentence in the introductory paragraph in subsection (1) and added subsection (3).

Compiler's Notes.

The letter "s" enclosed in parentheses so appeared in the law as enacted.

54-2707. Unlawful violations and liability. — (1) It is a misdemeanor for:

- (a) Any person to deliberately remove, alter, or obliterate any manufacturer's make, model, or serial number, personal identification number, or identifying marks engraved or etched upon an item of nonferrous metal

property or commercial metal property in order to deceive a scrap metal business;

(b) Any person to knowingly make, cause, or allow to be made any false entry or misstatement of any material matter in any book, record, or writing required to be kept under this chapter;

(c) Any person to sign the declaration required under this chapter knowing that the nonferrous metal property subject to the transaction is stolen;

(d) Any scrap metal business to possess commercial metal property that was not lawfully purchased or received under the requirements of this chapter;

(e) Any scrap metal business to engage in a series of transactions valued at less than twenty dollars (\$20.00) with the same seller for the purposes of avoiding the requirements of this chapter; or

(f) Any person to intentionally violate the provisions of section 54-2703, Idaho Code.

(2) Any person who has pled guilty to or been found guilty of violating the provisions of this section for a second time within five (5) years is guilty of a felony.

(3) A person who knowingly and intentionally takes copper or other nonferrous metals from an electrical substation without authorization of the utility, or who knowingly and intentionally takes copper or other nonferrous metals from a utility or communications services provider, thereby causing damage to the facilities of a utility or communications services provider, or interfering with the ability of a utility or communications services provider to provide service, is guilty of a felony.

(4)(a) A public or private owner of metal property is not civilly liable to a person who is injured during the theft or attempted theft of metal property.

(b) A public or private owner of metal property is not civilly liable to a person for injuries caused by a dangerous condition created as a result of the theft or attempted theft of the owner's metal property when the owner did not know, and could not have reasonably known, of the dangerous condition.

This section does not create or impose a duty of care upon an owner of metal property that would not otherwise exist under common law.

History.

I.C., § 54-2707, as added by 2009, ch. 152, § 2, p. 441; am. 2013, ch. 286, § 3, p. 738.

STATUTORY NOTES

Amendments.

The 2013 amendment, by ch. 286, added "and liability" to the section heading, design-

nated the extant provisions of the section as subsections (1) and (2); and added subsections (3) and (4).

CHAPTER 32

SOCIAL WORK LICENSING ACT

SECTION.

54-3204. Board — Powers and duties.
54-3211. Refusal to issue, refusal to renew,

suspension or revocation of license — Unprofessional conduct.

54-3204. Board — Powers and duties. — The board shall have the following powers and duties:

(1) Adopt and amend rules to administer and carry out the provisions of this chapter and for the conduct of its affairs, provided that such rules shall be promulgated in accordance with the provisions of chapters 26 and 52, title 67, Idaho Code;

(2) Maintain a list of the names and addresses of all persons licensed under this chapter;

(3) At its discretion, contract with the bureau of occupational licenses for those services deemed necessary for the proper administration of this chapter;

(4) To prescribe by rule the minimum amount and kind of continuing education to be required of each social worker seeking to renew a license in the state of Idaho;

(5) To establish by rule an inactive license status;

(6) To take such action as may be necessary to enforce the provisions of this chapter and to regulate the practice of social work;

(7) To review the practice of a social worker licensed pursuant to this chapter who is the subject of a complaint regarding a potential violation of the provisions of this chapter. This review may include client records, notes of the license holder and other materials related to the practice. The review will remain subject to nondisclosure according to the provisions of chapter 3, title 9, Idaho Code, unless the written consent of the client is received by the board.

History.

I.C., § 54-3204, as added by 1976, ch. 213, § 1, p. 776; am. 1994, ch. 139, § 1, p. 311; am.

2002, ch. 85, § 3, p. 189; am. 2008, ch. 15, § 1,

p. 21; am. 2013, ch. 15, § 1, p. 25.

STATUTORY NOTES

Amendments.

The 2013 amendment, by ch. 15, substi-

tuted “this chapter” for “this act” at the end of subsection (3) and added subsection (7).

54-3211. Refusal to issue, refusal to renew, suspension or revocation of license — Unprofessional conduct. — The board may refuse to issue, refuse to renew, may suspend, or may revoke any license issued under this chapter, or take other disciplinary action, upon proof, after a hearing, that the person has engaged in “unprofessional conduct.” The words “unprofessional conduct” as relating to persons licensed under this chapter are defined to include but are not limited to:

- (1) Conviction of a felony, or of any offense involving moral turpitude.
- (2) Habitual drunkenness or addiction to habit-forming drugs, either of

which impairs the ability to perform his work without danger to himself or the public he serves.

(3) Fraud or deceit in connection with services rendered as a social worker, masters social worker or clinical social worker or in establishing qualifications for licensure under this chapter.

(4) Aiding or abetting any person not licensed under this chapter in the practice of social work in the state of Idaho.

(5) Failing to be licensed or continuing to represent himself as licensed after the expiration of his license.

(6) Being found guilty of unprofessional conduct by the rules established by the board.

(7) Having had a license or registration to practice social work revoked, suspended or otherwise disciplined in any state, territory or county.

(8) Failing to comply with a board order entered in a disciplinary action.

(9) Failing to comply with any of the provisions of this chapter.

History.

I.C., § 54-3211, as added by 1976, ch. 213, § 1, p. 776; am. 2001, ch. 78, § 2, p. 198; am.

2002, ch. 85, § 8, p. 189; am. 2013, ch. 15, § 2, p. 25.

Amendments.

The 2013 amendment, by ch. 15, added present subsections (7) and (8) and redesign-

nated former subsection (7) as present subsection (9).

STATUTORY NOTES

CHAPTER 35

DIETITIANS

SECTION.

54-3503. License required.

SECTION.

54-3508. Waiver of requirements.

54-3504. Dietetic licensure board created — Appointment — Terms.

54-3503. License required. — (1) From and after January 1, 1995, it is unlawful for any person to assume or use the title or designation of "dietitian," "certified dietitian," "registered dietitian," or any other combination of terms that include the title "dietitian," unless such person has been issued a license pursuant to this chapter and the license is in good standing pursuant to rules of the board. Nothing contained herein shall be construed to prohibit the use of the term "dietetic" or "diet" as a descriptive term in connection with a person's occupation or employment.

(2) No person shall use any other title, designation, words, letters, abbreviations, or sign, card or device which indicates to the public that such person is a dietitian or has been issued a temporary permit pursuant to this chapter unless the person is so licensed or has been issued such permit, and the license or permit is in good standing pursuant to rules of the board.

(3) A person who is a registered dietitian, as determined by the commission on dietetic registration of the academy of nutrition and dietetics, or, who is credentialed as a dietitian by any other association which is also

recognized by the national commission for certifying agencies, may continue to use such credential without being licensed pursuant to this chapter as long as the person does not engage in activities set forth in section 54-3505(3), Idaho Code.

History.

I.C., § 54-3503, as added by 1994, ch. 217, § 1, p. 674; am. 2013, ch. 187, § 10, p. 447.

STATUTORY NOTES**Amendments.**

The 2013 amendment, by ch. 187, substituted "academy of nutrition and dietetics" for "American dietetic association" in subsection (3).

Compiler's Notes.

For more on the commission on dietetic registration, see <http://www.cdrnet.org>.

For more on the academy of nutrition and dietetics, see <http://www.eatright.org>.

54-3504. Dietetic licensure board created — Appointment — Terms. — (1) A dietetic licensure board is hereby created and the members thereof shall be appointed by the Idaho state board of medicine within sixty (60) days following the effective date of this chapter.

(2) The dietetic licensure board shall consist of four (4) members, three (3) of whom shall be dietitians and one (1) member shall be a member of the public with an interest in the rights of the consumer of health care services.

(3) In making appointments to the dietetic licensure board, the board shall give consideration to recommendations made by the Idaho academy of nutrition and dietetics, other professional organizations and dietitians and physicians.

(4) All members of the dietetic licensure board shall be current residents of the state of Idaho and have been residents of the state of Idaho for a minimum of three (3) years immediately preceding appointment.

(5) The initial three (3) dietitian members of the dietetic licensure board shall be persons registered by the commission on dietetic registration, academy of nutrition and dietetics, who are eligible to become licensed pursuant to this chapter, and who shall, within such time as may be established by the board, become licensed pursuant to this chapter.

(6) The initial dietetic licensure board shall be appointed for staggered terms, the longer of which will not exceed four (4) years. After the initial appointments, all terms shall be four (4) years, and a member may be reappointed. In the event of death, resignation, or removal of any member before the expiration of the term to which appointed, the vacancy shall be filled for the unexpired portion of the term in the same manner as the original appointment.

(7) The board may, upon recommendation of the dietetic licensure board, or upon its own motion, remove any member of the dietetic licensure board, for cause, prior to the expiration of the member's term.

(8) The dietetic licensure board shall, within thirty (30) days after its appointment, and at least annually thereafter, hold a meeting and elect a chairperson. The licensure board may hold additional meetings on the call of the chairperson or at the written request of any two (2) members of the licensure board. The licensure board may appoint such committees as it

considers necessary to carry out its duties. A majority of the members of the licensure board shall constitute a quorum.

(9) Each member of the licensure board shall be compensated as provided in section 59-509(n), Idaho Code.

History.

I.C., § 54-3504, as added by 1994, ch. 217, § 1, p. 674; am. 2012, ch. 91, § 1, p. 253; am.

2013, ch. 187, § 11, p. 447.

STATUTORY NOTES**Amendments.**

The 2013 amendment, by ch. 187, substituted "academy of nutrition and dietetics" for "dietetic association" in subsection (3) and substituted "academy of nutrition and dietetics" for "American dietetic association" in subsection (5).

Compiler's Notes.

The phrase "effective date of this chapter"

in subsection (1) refers to the effective date of S.L. 1994, ch. 217, which was July 1, 1994.

For more on the commission on dietetic registration, see <http://www.cdrnet.org>.

For more on the Idaho academy of nutrition & dietetics, see <http://eatrightidaho.org>.

For more on the academy of nutrition and dietetics, see <http://www.eatright.org/>.

54-3508. Waiver of requirements. — (1) The licensure board shall grant a license to any person who, on the effective date of this chapter, is registered as a dietitian by and with the commission on dietetic registration for the academy of nutrition and dietetics, a member of the national commission for certifying agencies.

(2) The licensure board may waive the examination, education, or experience requirements and grant a license to any person registered by the commission after the effective date of this chapter if the board determines the requirements for such registration to be equivalent to the requirements for licensure set forth in this chapter.

(3) The licensure board may waive the examination, education, or experience requirements and grant a license to any applicant who shall present proof of current licensure to engage in the practice of dietetics in another state, the District of Columbia, or territory of the United States which requires standards for licensure considered by the board to be equivalent to the requirements for licensure pursuant to this chapter.

History.

I.C., § 54-3508, as added by 1994, ch. 217, § 1, p. 674; am. 2013, ch. 187, § 12, p. 447.

STATUTORY NOTES**Amendments.**

The 2013 amendment, by ch. 187, in subsection (1), substituted "academy of nutrition and dietetics" for "American dietetic association" and deleted "health" preceding "certifying agencies" at the end.

Compiler's Notes.

The phrase "effective date of this chapter"

in subsections (1) and (2) refers to the effective date of S.L. 1994, chapter 217, which was July 1, 1994.

For more on the commission on dietetic registration, see <http://www.cdrnet.org>.

For more on the academy of nutrition and dietetics, see <http://www.eatright.org/>.

CHAPTER 37

OCCUPATIONAL THERAPY PRACTICE ACT

SECTION.

54-3705. Limited permit — Temporary license.

54-3705. Limited permit — Temporary license. — (1) A limited permit may be granted to a graduate occupational therapist or a graduate occupational therapy assistant who has completed the education and experience requirements of this chapter for an occupational therapist or an occupational therapy assistant. The permit shall allow a person to practice occupational therapy under supervision as defined in section 54-3715, Idaho Code. This permit shall be valid for a period of six (6) months or as extended by the board.

(2) A temporary license may be issued by the board to an applicant who is currently licensed and in good standing to practice in another jurisdiction and meets the requirements for licensure by endorsement of the other jurisdiction while the application is being processed by the board.

History.

I.C., § 54-3705, as added by 1987, ch. 69,

§ 1, p. 123; am. 2009, ch. 222, § 5, p. 691; am. 2013, ch. 14, § 1, p. 24.

STATUTORY NOTES

Amendments.

The 2013 amendment, by ch. 14, deleted “and” preceding “temporary” from the section heading and substituted the present last sentence of subsection (1) for: “This permit shall

be valid until the person is issued a license under section 54-3710, Idaho Code, or until the results of the examination taken are available to the board. The board may renew a limited permit once.”

CHAPTER 41

IDAHO REAL ESTATE APPRAISERS ACT

SECTION.

54-4105. Exceptions.

54-4105. Exceptions. — (1) The provisions of this chapter do not restrict the right to use the term “appraiser,” provided that such term is not used in a manner that creates the impression of certification by the state of Idaho to perform real estate appraisals other than ad valorem tax appraisals. However, nothing in this chapter shall entitle a state licensed or state certified real estate appraiser to appraise real estate for ad valorem tax purposes unless he has first been certified by the Idaho state tax commission pursuant to section 63-105A(17), Idaho Code.

(2) The provisions of this chapter shall not apply to a licensed real estate broker, associate broker or salesperson who, in the ordinary course of his business gives an opinion of the price of real estate for the purpose of a prospective listing or sale, provided that such person does not represent himself as being a state licensed or certified real estate appraiser.

(3) The provisions of this chapter shall not prohibit a real estate broker or associate broker licensed under chapter 20, title 54, Idaho Code, whose license is active and in good standing, from rendering a broker's price opinion, for which the broker may charge a fee, provided the broker's price opinion complies with the following requirements:

(a) The broker's price opinion shall be in writing and contain the following:

- (i) A statement of the intended purpose of the price opinion;
- (ii) A brief description of the subject property and property interest to be priced;
- (iii) The basis of reasoning used to reach the conclusion of the price, including the applicable market data and/or capitalization computation;
- (iv) Any assumptions or limiting conditions;
- (v) A disclosure of any existing or contemplated interest of the broker(s) issuing the opinion;
- (vi) The name and signature of the broker(s) issuing the price opinion and the date of its issuance;
- (vii) A disclaimer that, unless the broker is licensed under the Idaho real estate appraisers act, chapter 41, title 54, Idaho Code, the report is not intended to meet the uniform standards of professional appraisal practice;
- (viii) A disclaimer that the broker's price opinion is not intended to be an appraisal of the market value of the property, and that if an appraisal is desired, the services of a licensed or certified appraiser should be obtained.

The broker's price opinion permitted under this chapter may not be used as an appraisal, or in lieu of an appraisal, in a federally related transaction.

(4) Any person who is not licensed or certified under the provisions of this chapter may assist a state licensed or certified real estate appraiser in the performance of an appraisal, provided that he is actively and personally supervised by the state licensed or certified appraiser and provided further that any appraisal report rendered in connection with the appraisal is reviewed and signed by the state licensed or certified real estate appraiser.

(5) The provisions of this chapter requiring mandatory licensure or certification shall not apply to employees or agents of the Idaho transportation department or a local highway jurisdiction when estimating the market value for property that is subject to eminent domain by the department or local highway jurisdiction, or property owned by the department or local highway jurisdiction that has been declared surplus, where a noncomplex appraisal would normally be ordered, and the market value is ten thousand dollars (\$10,000) or less. Such estimates of market value shall be reviewed and approved by an Idaho state certified general real estate appraiser. Idaho state certified general real estate appraisers who estimate or review market value of property under this section shall be exempt from the requirements of uniform standards of professional appraisal practice. A value estimate shall be provided to the property owner who shall also be informed of his right to request and receive an appraisal of his property.

(6) This chapter shall not prohibit a property owner from expressing his personal opinion of the value of his own property, nor shall the provisions of this chapter prohibit a lender, or employee of a lending institution, from forming and expressing an opinion of collateral value in the ordinary course of business including, but not limited to, mortgaging property, underwriting a loan, or foreclosing a loan, so long as such opinion of collateral value is not represented as being an appraisal of the market value of the property, or prepared under the provisions of this chapter.

(7) This chapter shall not prohibit an attorney or accountant from rendering professional advice within the ordinary course of his profession, so long as such advice is not represented to be an appraisal of the market value of the property.

History.

I.C., § 54-4105, as added by 1990, ch. 82, § 1, p. 164; am. 1992, ch. 92, § 5, p. 282; am. 1993, ch. 320, § 1, p. 1178; am. 1994, ch. 71, § 1, p. 148; am. 1996, ch. 137, § 1, p. 462, am.

1996, ch. 322, § 56, p. 1029; am. 1999, ch. 54, § 3, p. 136; am. 2002, ch. 31, § 1, p. 45; am. 2004, ch. 85, § 1, p. 319; am. 2013, ch. 137, § 1, p. 321.

STATUTORY NOTES

Amendments.

The 2013 amendment, by ch. 137, inserted “or local highway jurisdiction” or similar language three times in the first sentence in subsection (5).

essional appraisal practice, referred to in paragraph (3)(a)(vii) and subsection (5), see http://appraisalinstitute.org/ppc/ethics_standards.aspx.

The letter “s” enclosed in parentheses so appeared in the law as enacted.

Compiler’s Notes.

For more on the uniform standards of pro-

CHAPTER 47

ACUPUNCTURE

SECTION.

54-4702. Definitions.

54-4702. Definitions. — As used in this chapter:

(1) “Acupuncture” means that theory of health care developed from traditional and modern Oriental medical philosophies that employs diagnosis and treatment of conditions of the human body based upon stimulation of specific acupuncture points on meridians of the human body for the promotion, maintenance, and restoration of health and for the prevention of disease. Therapies within the scope of acupuncture include manual, mechanical, thermal, electrical and electromagnetic treatment of such specific indicated points. Adjunctive therapies included in, but not exclusive to, acupuncture include herbal and nutritional treatments, therapeutic exercise and other therapies based on traditional and modern Oriental medical theory.

(2) “Board” means the Idaho state board of acupuncture.

(3) “NCCAOM” means “National Certification Commission for Acupuncture and Oriental Medicine.”

(4) “Practice of acupuncture” means the insertion of acupuncture needles

and use of similar devices and therapies, including application of moxibustion, to specific indicated points on the skin of the human body as indicated pursuant to traditional and modern theories of Oriental medicine. The "practice of acupuncture" does not include:

- (a) surgery; or
- (b) prescribing, dispensing or administering any prescription drug or legend drug as defined in section 54-1705(32[4])[35], Idaho Code.

History.

I.C. § 54-4702, as added by 1999, ch. 379, § 1, p. 1039; am. 2002, ch. 26, § 2, p. 29; am. 2006, ch. 290, § 4, p. 888; am. 2009, ch. 244,

§ 6, p. 748; am. 2011, ch. 135, § 6, p. 375; am. 2013, ch. 28, § 16, p. 52; am. 2013, ch. 270, § 6, p. 698.

STATUTORY NOTES

Amendments.

This section was amended by two 2013 acts which appear to be compatible and have been compiled together.

The 2013 amendment, by ch. 28, updated the reference near the end of paragraph (4)(b) in light of the 2013 amendment of § 54-1705.

The 2013 amendment, by ch. 270, updated the reference in paragraph (4)(b) in light of the 2013 amendment of § 54-1705.

Compiler's Notes.

For more on the national certification commission for acupuncture and oriental medicine, see <http://www.nccaom.org>.

The bracketed insertion near the end of paragraph (4)(b) was added by the compiler to correct the statutory reference.

CHAPTER 50

INSTALLATION OF HEATING, VENTILATION AND AIR CONDITIONING SYSTEMS

SECTION.

54-5015. Exclusive jurisdiction of the state — Restriction on requirement for additional licenses or fees —

Clarification of certification, licensing and permitting requirements.

54-5015. Exclusive jurisdiction of the state — Restriction on requirement for additional licenses or fees — Clarification of certification, licensing and permitting requirements. — (1) Only the administrator of the division of building safety of the state of Idaho is authorized and empowered to conduct examinations and to pass upon the qualifications of applicants, and to grant and issue certificates of competency and registration of apprentices to such applicants as are found to be qualified to engage in the trade, business, work or practice of heating, ventilation and air conditioning.

(2) No local jurisdiction shall have the authority to require additional certification or registration or to require payment of any fees in order for any HVAC contractor, specialty contractor, journeyman, specialty journeyman, apprentice, or specialty apprentice to engage in the heating, ventilation and air conditioning trade within the local jurisdiction or to issue certificates to persons certified or registered under the provisions of this chapter.

(3) Nothing in this chapter shall restrict a city or county from imposing stricter public safety rules, notwithstanding any provision of Idaho Code.

(4) A certificate issued pursuant to chapter 26, title 54, Idaho Code, or a license issued pursuant to chapter 10, title 54, Idaho Code, shall be acceptable for all HVAC installation work that falls within the scope of the certificate or license that has been issued. This will allow:

- (a) Individuals holding a current HVAC or electrical license or a current plumbing certification to install electrical circuitry from the disconnecting means to a water heater and electrical connections to the water heater as long as the disconnect is in sight from the unit and the circuit from the disconnecting means to the water heater is no more than fifty (50) feet long;
- (b) Individuals holding a current HVAC or electrical license to install:
 - (i) Electrical space heaters with no attached ductwork;
 - (ii) Electrical connections to HVAC equipment from the disconnecting means to the unit as long as the disconnect is in sight from the unit and the circuit from the disconnecting means to the HVAC equipment is no more than fifty (50) feet long; and
 - (iii) Ventilating fans, except ducted range hoods in residences;
- (c) Individuals holding either an HVAC certification or plumbing certification to install:
 - (i) Boilers that are not otherwise subject to inspection by the industrial commission or its authorized agent;
 - (ii) Fuel piping;
 - (iii) Piping for hydronic systems; and
 - (iv) Piping for steam and hot water boiler systems;
- (d) HVAC licensees to install control wiring of twenty-four (24) volts or less for HVAC equipment of five (5) tons or less in capacity.

(5) Notwithstanding any other provision of this section, plumbing certificate holders are not authorized to install control wiring in HVAC equipment, regardless of voltage.

History.

I.C., § 54-5015, as added by 2003, ch. 276, § 1, p. 733; am. 2004, ch. 308, § 10, p. 858;

am. 2007, ch. 197, § 6, p. 597; am. 2013, ch.

101, § 1, p. 242.

STATUTORY NOTES**Amendments.**

The 2013 amendment, by ch. 101, in paragraph (4)(c), substituted "HVAC certification" for "HVAC license" in the introductory para-

graph, substituted "Fuel piping" for "Gas piping and piping for hydronic systems" in paragraph (ii), and added paragraphs (iii) and (iv).

CHAPTER 51**NATUROPATHIC PHYSICIANS LICENSING ACT****SECTION.**

54-5110. Naturopathic medical formulary council established.

54-5110. Naturopathic medical formulary council established. — There is hereby established a naturopathic medical formulary council,

which is separate and distinct from the board, to be composed of seven (7) members. Two (2) members shall be naturopathic physicians licensed under this chapter, appointed by the board of naturopathic medical examiners. Three (3) members shall be pharmacists licensed under chapter 17, title 54, Idaho Code, appointed by the board of naturopathic medical examiners from a list of nominees provided by the Idaho state board of pharmacy. Two (2) members shall be physicians licensed under chapter 18, title 54, Idaho Code, appointed by the board of naturopathic medical examiners from a list of nominees provided by the Idaho state board of medicine. The initial council shall be appointed as follows: One (1) naturopathic physician shall be appointed for a one (1) year term; one (1) physician licensed under chapter 18, title 54, Idaho Code, and one (1) pharmacist shall be appointed for a two (2) year term; and two (2) pharmacists, one (1) naturopathic physician and one (1) physician licensed under chapter 18, title 54, Idaho Code, shall be appointed for a three (3) year term. Thereafter, the term of office shall be three (3) years. A quorum shall consist of five (5) members and shall be required for any vote to be taken. It shall be the duty of the naturopathic medical formulary council to establish a formulary for use by naturopathic physicians, and immediately upon adoption or revision of the formulary, the council shall transmit the approved formulary to the board, which shall adopt the formulary by temporary rule. The formulary will be reviewed annually by the council, or at any time at the request of the board. The formulary list may not go beyond the scope of prescription medicines and medical devices covered by approved naturopathic medical education and training and existing naturopathic medical formularies, or board-approved continuing education. The naturopathic medical formulary shall not include medicines and devices that are inconsistent with the training provided by approved naturopathic medical colleges. Nothing herein shall allow a naturopathic physician to dispense, administer or prescribe any prescription drug as defined in section 54-1705(32[4])[35], Idaho Code, or medical device unless such prescription drug or medical device is specifically included in the naturopathic medical formulary.

History.

I.C., § 54-5110, as added by 2005, ch. 329, § 1, p. 1026; am. 2006, ch. 290, § 5, p. 888; am. 2009, ch. 244, § 7, p. 748; am. 2011, ch. 135, § 7, p. 375; am. 2013, ch. 28, § 17, p. 52; am. 2013, ch. 270, § 7, p. 698.

STATUTORY NOTES**Amendments.**

This section was amended by two 2013 acts which appear to be compatible and have been compiled together.

The 2013 amendment, by ch. 28, updated the reference near the middle of the last sentence in light of the 2013 amendment of § 54-1705.

The 2013 amendment, by ch. 270, updated the reference in the last sentence in light of the 2013 amendment of § 54-1705.

Compiler's Notes.

The bracketed insertion in the last sentence was added by the compiler to correct the statutory reference.

CHAPTER 52

IDAHO CONTRACTOR REGISTRATION ACT

54-5202. Declaration of policy.

JUDICIAL DECISIONS

Cited in: Stonebrook Constr., LLC v. Chase Home Fin., LLC, 152 Idaho 927, 277 P.3d 374 (2012).

54-5203. Definitions.

JUDICIAL DECISIONS

Cited in: Stonebrook Constr., LLC v. Chase Home Fin., LLC, 152 Idaho 927, 277 P.3d 374 (2012).

54-5204. Registration required.

JUDICIAL DECISIONS

Failure to Register.

Construction company, operating as a limited liability company, was precluded from placing a mechanics' lien against property

under § 54-5208, because it did not properly register under this section. *Stonebrook Constr., LLC v. Chase Home Fin., LLC*, 152 Idaho 927, 277 P.3d 374 (2012).

54-5208. Denial of lien rights.

JUDICIAL DECISIONS

Eligibility for Lien.

Construction company, operating as a limited liability company, was precluded from placing a mechanics' lien against property

under this section, because it did not properly register under § 54-5204. *Stonebrook Constr., LLC v. Chase Home Fin., LLC*, 152 Idaho 927, 277 P.3d 374 (2012).

54-5217. Penalties.

JUDICIAL DECISIONS

Eligible to Maintain Action.

Construction company, operating as a limited liability company, was precluded from placing a mechanics' lien against property

under § 54-5204, because it did not properly register under § 54-5204. *Stonebrook Constr., LLC v. Chase Home Fin., LLC*, 152 Idaho 927, 277 P.3d 374 (2012).

